
(2003) 12 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No"s. 30158, 30314, 30677, etc. Batch of 2003 and
W.P.M.P. No"s. 36842, 37029, 37413, etc. Batch of 2003

Mr. A. Varadharajan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-12-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 141, 19, 19(1)(g)
Madras Prohibition Act, 1937 — Section 17C, 17C(1), 17C(1B)(b), 17C(1B)(c), 17C(1B)(c)(iii)

Citation : (2003) 12 MAD CK 0136

Hon'ble Judges : B. Subhashan Reddy, C.J.;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : K.M. Vijayan, for M/s. La Law, R. Krishnamurthy, for M/s. Ayyadurai, Mrs. Nalini Chidambaram, for L.S.M. Hassan Fizal, R. Gandhi, for M/s. M. Baskar, T.R. Rajagopalan, for M/s. T.R. Rajaraman, K. Selvaraj, AR. L. Sundaresan, A.V. Somasundaram for M/s. Lakshmi Priya Associates, K. Kannan for M/s. Yashodvaradhan, M. Kamalanathan, Palani Selvaraj, R. Saravanakumar and V. Kathiravan, for the Appellant; N.R. Chandran, Advocate General, assisted by Mr. V. Raghupathy, Govt. Pleader, Mr. R. Muthukumaraswamy, A.A.G., assisted by Mr. K. Mahendran, Spl. G.P. and Mr. S. Srinivasan, Govt. Advocate, Mr. R. Muthukumaraswamy, A.A.G., assisted by Mr. P.D. Audikesavalu and Mr. E. Manoharan For TASMACH, for the Respondent

Judgement

B. Subhashan Reddy, C.J.—These matters are filed assailing the constitutional validity of Tamil Nadu Prohibition Act, 1937 as amended by Act 31 of 2003, which was preceded by Ordinance No. 8 of 2003. Since last two decades the wholesale business in Indian Made Foreign Liquor (IMFL) was being conducted by Tamil Nadu State Marketing Corporation Limited (TASMACH) and the privilege of retail vending was being conferred on the individuals on application and complying with such formalities as were prescribed every year. Cooperative Societies were also entrusted with retail trade to some extent. We need not go into those details and suffice it to state the events from 2001, as this litigation traces to the period

commencing from excise year 2001- 2002. Changing the excise policy of the preceding year 2000-2001, G.O. Ms. Nos. 113 and 115, Prohibition and Excise Department dated 22.06.2001 were issued creating a block period of 3 years from 2001 to 2004. The difference between yearly lease and block period lease is that while the yearly lease expires soon after the end of the excise year, the lease relating to block period will not lapse ipso facto and the licensees have got a right of renewal subject to payment of increase in privilege amount for the 2nd and 3rd years, as prescribed therefor. Applications were called for and according to the procedure prescribed, lots were drawn and successful tenderers have taken up shops for retail vending. 6000 retail vending shops were identified and later on Government increased it to 7000 during November 2001, which was questioned by the licensees in this Court, but unsuccessfully. Then came the Excise year 2002-2003, and this time the Government wanted to change the policy discontinuing the block period and also recategorised and re-classified the shops for the purpose of augmenting more revenue. The licensees of the previous year, who had opted for block period were not granted renewal as of right, but were sought to be subjected to fresh drawal, ignoring their rights for block period. Writ petitions were filed questioning the action of the Government in G.O.Ms. No. 128, 129 and 130, Prohibition and Excise Department dated 08.07.2002, which formulated the new policy and this Court by Judgment dated 24.07.2002 See Secretary to Government of T.N. v. K. Vinayagamurthy / W.A. No. 2209 of 2002. dated 24.7.2002 has upheld the increase in shops, the re-categorisation and re-classification which aimed at mobilising more financial resources, but set at naught the policy of not renewing the licences of the block period licensees who were willing to pay even the enhanced licence fee and accommodating more shops than notified earlier. The Government went in appeal to the Supreme Court in SLP No. 14735 of 2002, but by its Judgment dated 22.08.2002 Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy, the Supreme Court, affirmed the Judgment rendered by this Court slightly modifying the relief portion. While this Court issued mandamus to renew the licences of the block period, the Supreme Court modified the same by directing the Government to consider the renewal on the basis of findings recorded. But, material part of the Judgment rendered by this Court that the block period cannot be disturbed subject to payment of the privilege amount by the licensees was upheld. Thereafter, there was another controversy as the Government had renewed the licences of the block period to the extent of only 296 persons who have remitted the entire privilege amount by 31.07.2002. In the Judgment rendered by this Court on 24.07.2002 a direction was given to remit the whole of the privilege amount by 31.07.2002 for entitling the renewal. Therefore, litigation in W.P. No. 34090 of 2002 K. Ramanathan Vs. The State of Tamil Nadu, and batch had erupted as most of the licensees were remitting the privilege amount for 15 days and that was in three spells of 15 days each, because of the issuance of G.O.Ms. Nos. 176, 180 and 189, Prohibition and Excise Department dated 30.07.2002, 12.08.2002 and 29.08.2002 respectively. The dispute then raised by the Government was that such licensees other than 296 are not

entitled for renewal as the amounts were not remitted in full within the time limit stipulated by this Court i.e., 31.07.2002. But, the plea of the said licensees was that they were ready to deposit the entire privilege amount, but the Government had issued instructions in the above mentioned Governmental Orders to receive the amounts only for 15 days, which was extended twice on the plea of the pendency of its appeal before the Supreme Court. This Court had accepted the said plea of the licensees and by its Judgment dated 25.09.2003 issued directions to Government to receive the balance of the amount by 30.9.2002 after making adjustments of the amounts remitted earlier and then renew the period of licences. The Government had again questioned the said order in the Supreme Court in SLP No. 19277 of 2002, and the Supreme Court on 13.11.2002, modifying the Judgment of this Court, passed the following Order.

"All the existing licensees (the previous licensees) for the block period who had remitted the whole year's licence fee by 31st of July 2002, as well as all of them who were granted licence for a period of six weeks subsequent to the impugned order of the High Court dated 25.09.2002 and in pursuance of the order of this Court dated 03.10.2002 on payment of the proportionate licence fee will be granted licence for the balance period of the Excise Year 2002-2003 culminating on 15th September, 2003. By way of clarification, we hold that those of licensees who dropped out, even though applied for pursuant to the High Court's order dated 25.09.2002 as well as those of the licensees who had participated in the fresh lot in accordance with the new Excise Policy will not be entitled to get advantage of this order. It is further clarified that all those licensees who might have deposited the whole year's fee though were granted licence for a period of six weeks pursuant to the order dated 03.10.2002 will also be entitled to get the licence for the balance period of the Excise Year.

We would also observe that it will be open for any of the existing licensees as well as the new allottees on the basis of the draw of the lots to opt out if they find the continuance of the privilege to be onerous in any area, where the number of shops exceeds the number of notified shops on account of adjustment required to be made. The appeal stands disposed of on aforesaid terms."

2. Excise Year 2002-2003 had to lapse on 15th September 2003, but it was extended till 22nd October and again to 16th November and then finally to 28th November, 2003. Meanwhile, for the excise year 2003-2004, policy was evolved by issuance of G.O.Ms. No. 243, Prohibition and Excise Department dated 04.10.2003. Now, the system of selection by drawal of lots is given a go-by, by inviting applications under selection method on the basis of merits of the respective candidates taking into consideration the following criteria;-

ELIGIBILITY CRITERIA FOR THE GRANT OF PRIVILEGE OF RETAIL VENDING OF IMFL

Sl. No. --DESCRIPTION OF THE ELIGIBILITY CRITERIA -- MARKS

1. New Entrants to IMFL business --10

2. Educational Background of the applicant--10
3. Financial capability--20
4. Business ability and aptitude--20
5. Infrastructure facilities--20
6. Ability to give exclusive attention to IMFL business--20

Total --100

3. The number of retail shops has been increased to 8500 and the duration of the licence is fixed as one year. Each applicant was made entitled to apply for only one shop. What is relevant for these cases is Clause (iv) of Paragraph - 2 of G.O.Ms. No. 243, Prohibition and Excise Department, dated 04.10.2003, which reads as follows:

"(iv) The Government direct that as per the orders of the Hon'ble Supreme Court of India, those licensees who were granted renewal of license in 2002-2003 in terms of the orders of the Supreme Court of India will be entitled to get renewal of license, on application by them for the year 2003-2004, commencing from 16.11.2003, on payment of an amount equivalent to the privilege amount for the year 2002-2003 plus 10% of the same. (The word privilege amount referred to in this para is the privilege amount as referred to in the Rules as they existed in the year 2002-2003.)"

In G.O.Ms. No. 244 dated 4.10.2003 the rules were amended to suit the new excise policy, and in G.O.Ms. No. 245 dated 4.10.2003, elaborate procedure has been prescribed.

4. We also feel it apt to extract the relevant portion of G.O.Ms. No. 245, Prohibition and Excise Department, dated 04.10.2003, which reads as follows:

"ABSTRACT

Prohibition and Excise - Tamil Nadu Liquor (Retail Vending) Rules, 1989 - Licensing of Indian Made Foreign Liquor retail vending shops during the year 2003-2004 - Certain amendments to Rules - Ordered - Notification issued.

PROHIBITION AND EXCISE (VI) DEPARTMENT

G.O.Ms. No. 245 Dated: 04.10.2003

Read again:

1. G.O.(Ms)No. 128, P&E (VI) dt. 8.7.02
2. G.O.(Ms)No. 129, P&E (VI) dt. 8.7.02
3. G.O.(Ms)No. 130, P&E (VI) dt. 8.7.02
4. G.O.(Ms)No. 243, P&E (VI) dt. 4.10.02

Read also:

5. From the Commissioner of Prohibition and Excise Lr.Roc.P&E IX(1)/13295/03 dt. 14.08.2003.

6. From the ADGP, Lrs. C. No. 10/ADGP/ Campt/2003

Dt. 16.09.2003 & C. No. 81 /ADGP/(Enft) /Campt/2003 dt. 4.9.2003.

ORDER

5. In the year 2001, based on a study of the then existing policy of tender-cum-auction of IMFL retail Vending Shops and with the view to increasing the Excise Revenue, the Government issued orders in G.O.(Ms)No. 113 P&E (VI) dated 22.06.2001, introducing a new licensing system in which the IMFL shops were notified on local area basis, with privilege rates being fixed for each category of local area. A new system of allotment of shops by drawal of lots was also introduced in the G.O.(Ms)No. 115 P&E (VI) dated 22.06.2001. In the G.O. first read above, the Government, issued orders in 2002-2003 to continue the system of allotment of shops by drawal of lots while increasing the number of shops to 7000 based on reports of the Collectors. The Government also increased the privilege amount for IMPL shops and introduced new features like the re-categorisation of shops located in areas adjoining Corporations and Municipalities, treating them on par with the Corporations and Municipalities for purpose of fixation of privilege amount and also deleted the Rule relating to renewal.

2. These policy changes and the deletion of the rule relating to renewal of licenses were challenged in the High Court, Madras. Based on the Orders of the Supreme Court, renewal of license for the year 2002-2003 was granted to such of those persons who had paid the privilege amount in full for the entire year by 31.07.2002.

3. Following the Supreme Court's orders, the Government have now decided that the licensees who were granted renewal of their licence in 2002-2003 will be granted renewal for the year 2003- 2004 also, on payment of privilege fee of an amount equivalent to the privilege amount for the year 2002-2003 plus 10% of the same. (The word privilege amount referred to in this para is the privilege amount as referred to in the rules as they existed in the year 2002-2003.) Orders for this will be issued separately.

4. In the current year, the entire question of procedure for allotment of shops has been reviewed afresh by the Government in the light of disturbing reports received from the Additional Director General of Police (prohibition Enforcement Wing) regarding several and continuing instances of sale of contraband liquor sourced from adjoining States like Karnataka, Pondicherry and Goa even in some licensed premises. The government have viewed these reports with concern,

since, the consumption of such contraband liquor would affect the health of the consuming public in Tamil Nadu, apart from resulting in loss of revenue to the State.

5. It has also been brought to the notice of the Government that during 2002-2003, the number of IMFL shops that were finally licensed was around 5300, including Co-operatives and Tamil Nadu Civil Supplies Corporation Shops, leaving 1700 shops vacant, and that there were a number of cases of persons withdrawing after getting allotment of the IMFL shops and seeking refunds. There were still indications that cartelisation had not been eliminated by the lot system and that there were withdrawals after getting allotment, vacancies in shops, dislocation of the IMFL sales and loss in revenue.

6. In order to prevent instances of sale of spurious and contraband liquor even in licensed premises and taking note of the defects of cartelisation and cornering of shops being continued, leading to vacancies in IMFL shops, as well as other irregularities in the shops by unscrupulous elements, the Government consider that the entire system of allotment of privilege should be subjected to an overhaul. Since, the lot system did not ensure any check on the ability or suitability of the applicants, a stringent and transparent system of selection that would go into the background of the applicants based on information and documents obtained from them should be introduced. The selection procedure should pick out suitable persons from the point of view of educational background, business ability, financial capacity and being without any previous record of malpractices etc.,

7. The Government consider that the process of selection should be entrusted to District Level Selection Committees consisting of two Retired Judicial Officers of the rank of District Munsiff, apart from the Assistant Commissioner of Prohibition and Excise/Deputy Commissioner of Prohibition and Excise of the District or an Officer of the rank of Deputy Collector of the Tamil Nadu Civil Service as member Secretary. The Committee should personally interview the applicants after a scrutiny of the documents filed by them, with a view to selecting suitable applicants for the grant of IMFL licence. The Government consider that this would go a long way towards preventing malpractices like the sale of illicit and contraband liquor sourced from adjoining States in licensed premises and also eliminate other malpractices like cornering of shops etc., noticed in the earlier procedure.

8. The Government consider that the constitution of the District Level Selection Committees, Regional Level Appellate Authorities and State Level Revisionary Authority will subject the selection process to the strictest standards of fairness and transparency, apart from providing an in-built system of appeal and review by erstwhile members of the judiciary, without giving room for any complaint whatsoever. It will achieve the objective of the State to put in place licensees of IMFL shops who will not stoop to any illicit practices in the IMFL trade that would affect the people's lives and public health.

9. The Government have, therefore, decided to constitute District Level Selection Committees in every District to scrutinize and select suitable persons for the grant of privilege of vending IMFL in retail from the Excise Year 2003-2004 onwards. The composition of the District Level Selection Committee will be as follows:

(i) Two Retired Judicial Officers of the rank of District Munsif.

(ii) Assistant Commissioner of Prohibition and Excise/Deputy Commissioner of prohibition and Excise of the District concerned or an officer in the rank of Deputy Collector of the Tamil Nadu Civil Service to be appointed by the Government (Member Secretary)

10. All applications for grant of IMFL in 2003-2004 shall be made to the licensing authority in Form-VI, furnishing the information called for in the application, supported by documentary evidence. The selection by the District Level Selection Committee would be made by a system of marks to be allotted to the different suitability criteria provided for in the Rules, after a personal interview of the applicants, ensuring that an open and transparent selection by a Competent Committee or erstwhile judicial officers is established.

11. To ensure that this selection system also has a built in procedure for a quasi-judicial review of appeal and revision, the Government have decided that applicants aggrieved by the grant of licence by the licensing authority may file an appeal to the Regional Level Appellate Authorities, each consisting of two Retired District Judges. Revisions against the orders of the Regional Level Appellate Authorities shall lie to a State Level Revisionary Authority consisting of a Retired Judge of High Court of Madras.

12. Orders regarding the constitution, composition and functions of the District Level Selection Committees, Regional Level Appellate Authorities and State Level Revisionary Authority will be issued separately.

13. Accordingly, the following Notification will be published in an Extraordinary issue of the Tamil Nadu Government Gazette, dated the 4th October 2003.

-----."

5. The last date set for filing applications was 13.10.2003 and it is stated that applications have been filed with Application Fee of Rs. 500/- and 50% of the privilege amount. The applicants included the licensees of the Block Period for the years 2001-2004, as also others. In so far as the applicants other than of block period are concerned, they are bound by the new Excise Policy and had to be judged in the light of what is stated in the Governmental Orders of undergoing selection by the Selection Committee with rights of appeal to the Regional Committees and then Revisionary Committee. The District Level Selection Committees are headed by two retired Judicial Officers of the rank of

District Munsif, apart from the Assistant Commissioner of Prohibition and Excise/ Deputy Commissioner of Prohibition and Excise of the District or an Officer of the rank of Deputy Collector of the Tamil Nadu Civil Service as Member Secretary. The Regional Level Appellate Authorities each consists of two Retired District Judges and State Level Re-visionary Authority consists of a retired Judge of Madras High Court. The Government intended to constitute the above Committees conferring quasi-judicial functions so as to see that there is no malpractice or any room for complaint for any arbitrary or illegal action and see that the licensing system runs smoothly and efficiently, both benefiting the Government, in terms of revenue, as also the general public avoiding the illegal sales of spurious liquor.

6. Challenging the above Policy, Writ Petitions have been filed and particularly by the licensees of the Block Period and that resulted in filing of some Writ Appeals against the orders of the learned single Judge and they were heard and reserved for judgment. Meanwhile Ordinance No. 8 of 2003 was promulgated on 26.10.2003 inserting sub-Section 1B and clauses (a),(b) and (c), after sub-Section 1A, in Section 17C of the Tamil Nadu Prohibition Act, 1937, vesting TASMAL with the privilege of selling IMFL by retail, in addition to wholesale. It may be relevant to extract the whole of the new provision.

2. In Section 17C of the Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as the Principal Act), after sub-Section (1A), the following sub-Section shall be inserted, namely:-

"(1-B) (a) Notwithstanding anything contained in this Act, the Tamil Nadu State Marketing Corporation Limited, which is a Corporation wholly owned and controlled by the State Government, shall have the exclusive privilege of selling, by retail, Indian made foreign spirits, for the whole of the State of Tamil Nadu and no other person shall be entitled to any privilege of selling, by retail, Indian made foreign spirits for the whole or any part of the State.

(b) Notwithstanding anything contained in this Act, Tamil Nadu State Marketing Corporation Limited shall be granted the licence by the Commissioner for the exercise of the exclusive privilege referred to in clause (a) and such licence shall be subject to the rules made by the Government in this behalf and to such conditions and restrictions as the Commissioner may, from time to time, specify.

(c) (i) The Tamil Nadu State Marketing Corporation Limited shall, as soon as may be, after the grant of the licence under clause (b) for the exercise of the exclusive privilege referred to in clause (a), fix, locate and open as many shops as may be necessary to effectively carry on the business of sale, by retail, of Indian made foreign spirits in the State and the said Corporation in so fixing the shops, shall take into account the population of the locality, the needs of the locality and other relevant factors.

(ii) The Tamil Nadu State Marketing Corporation Limited shall carry on the business of selling, by retail; Indian made foreign spirits-

(A) either directly by the said Corporation; or

(B) through Cooperative Societies appointed by the said Corporation as agents to act on its behalf and on such terms and conditions as the said Corporation may specify; or

(C) by both the methods specified in subitems (A) and (B) of this item.

(iii) Any dispute between the said Corporation and the Co- Operative Society, appointed as its agent, in respect of any matter, shall be referred to the Commissioner or an officer not below the rank of District Revenue Officer specially empowered by the State Government in this behalf, whose decision thereon shall be final and such decision shall not be called in question in any Court.

Explanation.-For the purposes of this Act, a Co-Operative Society appointed as agent by the Tamil Nadu state Marketing Corporation Limited for selling on its behalf, by retail, Indian made foreign spirits, shall not be deemed to be exercising any privilege of selling, by retail, Indian made foreign spirits and accordingly the provisions of this Act relating to the grant of such privilege and licence for selling, by retail, Indian made foreign spirits shall not apply to such agent."

7. While the insertion of the above provision makes it mandatory that TASMAL shall have the exclusive privilege of selling IMFL by retail, insertion of another new provision Section 22D nullifies the subsisting licences with effect from 29.11.2003. For such of those licensees, who had opted drawal system for the Excise Year 2002-2003 are concerned, there cannot be any complaint of the above provision as their licences expired on 15th September 2003 and in fact, they had an extended period of more than two months. But situation is entirely different in the case of Block Period licensees. In the case of Block Period licensees, renewal of licence for the excise year 2003-2004 is a matter of right subject to the payment of 10% increase over last year's privilege amount. But block period licensees are affected. The said provision reads:

"3. After Section 22C of the principal Act, the following Section shall be inserted, namely:-

"22-D. Licence granted for selling, by retail, Indian-made foreign spirits to cease to be valid.- (a) Notwithstanding anything contained in this Act or in any judgment, decree or order of any Court, every licence granted or renewed in respect of any privilege of selling, by retail, Indian-made foreign spirits (other than the licence granted or renewed for supply in hotels, clubs and stores and depots run by the Defence Department, Government of India) and which is valid on the 26th day of October 2003 shall cease to be valid on the expiry of the 28th day of November 2003 on which date the validity of the said licence shall, under the existing rules, expire and any licence renewed for any period beyond 28th day of November 2003 shall cease to be valid and in such cases, all fees

(including the licence fee and the privilege amount) paid for renewal of licence shall be refunded.

(b) Notwithstanding anything contained in this Act or in any judgment, decree or order of any Court, every application made for the grant or renewal of licence for selling, by retail, Indian-made foreign spirits and pending before the Commissioner or before the State Government or any other Authority on the 26th day of October 2003 and every action taken, or enquiry made, in respect of such application, shall abate and all fees in connection with such application (including the application fee and the licence fee, if any), already paid shall be refunded.

(c) The Tamil Nadu Liquor (Retail Vending) Rules, 1989 and the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 2002, are hereby repealed with effect from the 29th day of November 2003:

Provided that such repeal shall not affect any offence committed or any fine, penalty or forfeiture incurred before the 29th day of November 2003.

(d) (i) Notwithstanding anything contained in sub-Section (1-B) of Section 17C and without prejudice to the provisions contained in Section 54, the State Government may make rules for grant of licences to such hotels, clubs and stores and depots run by the Defence Department, Government of India, as may be prescribed and for the purpose of carrying into effect the provisions of this section and sub-section (1-B) of section 17C.

(ii) Within a period of one month commencing on and from the 29th day of November 2003, the State Government shall, on payment of the price, take over the entire stock of Indianmade foreign spirits, if any, which on the 29th day of November; 2003, is in possession of any holder of a licence which shall cease to be valid under clause (a).

Explanation. - For the purposes of item (ii) of this clause, the expression "stock of Indianmade foreign spirits" shall include stocks in movement on the 29th day of November, 2003, consequent on the orders placed by such holder with the suppliers in pursuance of permits granted by the Competent Authority under this Act."

8. The above Ordinance was substituted by the Tamil Nadu Act 31 of 2003, hereinafter referred to as the Amending Act, retaining the above stated newly inserted provisions in tact.

9. Assailing the above Amending Act, Writ Petitions have been filed and even in the Writ Petitions, which were earlier filed assailing the Ordinance, amendments were sought for seeking to question the Amending Act and the said amendment petitions were allowed.

10. Mr. K.M. Vijayan, Mr. R. Krishnamurthi, Mrs. Nalini Chidambaram, Mr. R. Gandhi and Mr. T.R. Rajagopalan, senior counsel, and Mr. K. Selvaraj, Mr. AR. L.

Sundaresan, Mr. K. Selvaraj, Mr. Palani Selvaraj, Mr. R. Saravana Kumar, Mr. V. Kathiravan, Mr. A.V. Somasundaram, Mr. K. Kannan and Mr. M. Kamalanathan, learned counsel, have submitted their arguments on behalf of some of the petitioners and other learned counsel, appearing for the other petitioners, have adopted their arguments.

11. On behalf of the State, both Mr. N.R. Chandran, learned Advocate General, and Mr. R. Muthukumaraswamy, learned Additional Advocate General have defended the Governmental action in enacting the amendment.

12. Batches of cases, which have been filed after reserving the judgment on 28.11.2003 have also been clubbed along with this batch as the learned counsel appearing for the petitioners in those writ petitions have adopted the arguments already addressed earlier.

13. Instead of separately referring to each of the arguments addressed by the learned counsel for the petitioners and to avoid over-lapping and repetition, we summarise the contentions of the petitioners' counsel as hereunder:

(i) Right to trade in liquor is a fundamental right traced to Article 19 (1) (g) of Indian Constitution unless there is a total prohibition imposed by the State;

(ii) TASMAL is not a State within the meaning of Article 12 of the Indian Constitution and cannot be termed as an instrumentality of the State and so also, the Cooperative Societies, and the Government cannot run the liquor trade either through TASMAL or through Co-operative Societies

(iii) Co-operative Societies have laudable objects in consonance with the co-operative movement and liquor trade cannot be entrusted to Co-operative Societies;

(iv) The Government has acted arbitrarily violating Article 14 of Indian Constitution as TASMAL and Cooperative Societies even though legal persons, are equal to individuals and while granting retail vending to TASMAL and Cooperative Societies, the petitioners cannot be kept away from liquor trade and this action of the Government is not only arbitrary but is also mala fide so as to entrust the liquor trade to choosy ones under the guise of a further delegation to the Cooperative Societies:

(v) There is a rank discrimination in not granting licenses to the individuals while granting the same to hotels, clubs, stores and depots run by the Defence Department, Government of India, as the above categories are nothing but a group of persons and there is no valid classification made between individual persons and group of persons.

(vi) The Government has abdicated essential legislative functions by delegating the power to TASMAL either to do the liquor trade by itself or further appoint Co-Operative Societies for that purpose;

(vii) The Objects and Reasons, which have been stated for enacting the

amendment, are non-existent and as such/the Amending Act is a colourable piece of legislation and is unconstitutional and bad;

(viii) Having invited applications pursuant to G.O.Ms. Nos. 243, 244 and 245, Prohibition and Excise Department dated 4.10.2003, and accepted the application fees and 50% of the privilege amount, the Government had no power to turn back and has to proceed further in consonance with the above governmental orders;

(ix) The Amending Act is an affront to the judicial verdict of this Court, as affirmed by the Supreme Court, protecting the Block Period licensees and is thus Constitutionally invalid as it encroaches on the judicial powers of the State.

(x) Even if the outgoing licensees, other than the Block Period licensees, are not having the right for the grant of licenses for the Excise Year 2003 - 2004 as of right, the State cannot continue its monopoly in liquor trade through TASMAL and Cooperative Societies because of inseparability, as monopoly of the State is unworkable in scattered parts after parting privilege of retail vending to block-period licensees.

14. Countering the above arguments, the learned Advocate General and the learned Additional Advocate General submit that there is no fundamental right to trade in intoxicants, that Article 19(1)(g) of the Indian Constitution is not at all applicable, that as no other individual has been granted the privilege of vending the IMFL liquor in retail, the question of invocation of Article 14 also does not arise, that the State has got monopoly in the trade of intoxicants, that the State can either impose prohibition or do the business by itself or through its agents or, in its discretion, part with the privilege of vending the liquor, be it wholesale or retail, to the private individuals but there is no right for any private individual or a body corporate to force the Government to part with the privilege of liquor vending. They further submit that TASMAL is a company wholly owned by the Government and is a State under Article 12 of Indian Constitution and so also the Cooperative Societies, that in any event, TASMAL and Cooperative Societies act only as agents of the Government to vend liquor, that the writ petitioners have got no say in the said discretion of the Government and cannot interfere with the decision of the Government in that regard and that so long as the liquor vending is not entrusted to any individual, the petitioners have got absolutely no locus to challenge the Governmental action. It is also contended that doctrine of severability has no application. It is further submitted by them that the action of the Government in enacting the amendment is absolutely valid and is not ultra vires the Constitution, that there is no annulment of the judicial verdict relating to Block Period Licensees, that the Legislature has got Constitutional authority to remove the basis of any judgment rendered by the Court, that the cessation of any licence of Block Period by virtue of the newly inserted Section 22D of the Act only removes the basis of the judgment rendered by this Court relating to Block Period Licensees and as such, there is no in-road made into the domain of the judiciary.

15. Plethora of precedents have been cited on either side and a day before conclusion of arguments, i.e. on 27.11.2003, an order was passed keeping the commencement of trade by TASMAL and Cooperative Societies in abeyance by one week, but on the concluding day of the arguments i.e. on 28.11.2003, the pleas of the Advocate General and the Additional Advocate General were again considered in the context of balance of convenience and the order of the preceding day was modified to the following effect.

"The arguments have been concluded. As already stated above, the judgment cannot be handed out to-day, as the time is now 11.45 a.m. Learned Advocate General and learned Additional Advocate General have strenuously contended that the Government have made all preparations for commencement of the business from tomorrow (29.11.2003) by investing huge amount, and that if the order passed yesterday (27.11.2003) is not modified, then irreparable injury will ensue, and that the Government be permitted to vend IMFL in retail, jointly with the licensees, who are claiming the renewal as of right.

2. Mr. K.M. Vijayan, learned senior counsel and Mr. S.S. Sunder, learned counsel appearing for some of the petitioners submitted that the order passed by this Court yesterday should continue to operate.

3. We are mainly going on the balance of convenience factor. In the event of writs being allowed, then the entire Government staffs have to be withdrawn and the shops, which are established, have to be taken off. On the other hand, if a modified interim order is passed enabling such of the licensees, who are claiming renewal of licenses as of right, to operate then there should not be any difficulty in restoring the shops to the Government in the event of dismissal of the writ petitions. Such persons shall only include 284 (who had remitted the privilege amount before 31.07.2002) and 595 (who had remitted the amount within 30.09.2002), and their contentions that they are entitled for the renewal of licenses for the remaining block period have got to be considered and adjudicated upon. The other licensees, prima facie, have no such right to continue, as they were granted licenses only for one year i.e., 2002-2003.

4. In that view of the matter, we modify our order dated 27.11.2003 to the following effect:

(i) The IMFL retail vending shops, which are in operation as on to-day, and run by the above 284 plus 595 totally 879 persons, shall continue the business of vending IMFL in retail and for the rest of the areas, the Government is at liberty to either vend itself or through TASMAL or Co-operative societies.

(ii) We make it clear that so long as the above 879 persons conduct their IMFL retail vending, the proportionate amount shall be tapped daily from the security deposit.

Responding to Mr. K.M. Vijayan's apprehension that TASMAL may not release the stocks, the learned Advocate General and the learned Additional Advocate

General assured before this Court that IMFL stocks, as indented by the above 879 persons, shall be made available to them on payment of cost thereof."

The above order was assailed by the Government in SLP (Civil) No. 23026 of 2003 in the Supreme Court and the Supreme Court by its order dated 3.12.2003 has passed the following order:

"Issue notice. Notice on the prayer for interim relief also.

Shri Venugopal, learned senior advocate states that only Tamil Nadu State Marketing Corporation Limited would carry on the retail vending of Indian made foreign liquor in the State of Tamil Nadu under the Ordinance hereinafter.

In view of this statement, we suspend the operation of the order under challenge in this special leave petition.

This order shall cease to have effect as and when any judgment is delivered by the High Court. We further clarify that this order shall not be construed by the High Court as an expression of opinion on merits by this Court. The same shall not come in the way of the High Court to decide the matter on merit in any way."

16. POINT (i) RELATING TO ART. 19 (1) (g): As early as in 1954, a Constitutional Bench of the Supreme Court in *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, held that elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business the principles applicable to trade which all can carry on. Another Constitutional Bench of the Supreme Court in *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, also took the same view. To the same effect is the decision rendered by another Constitution Bench in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . However, a different note was struck by another Constitution Bench of the Supreme Court in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, in which the contention that liquor trade cannot be brought within the fold of Article 19(1)(g) was not accepted. It was held that the liquor is like any other commodity and that the morality or otherwise of a deal does not affect the qualify of the activity though it may be a ground for imposing a restriction on the said activity and if a law prohibits dealing in liquor, the dealing does not cease to be business but the said law imposes a restriction on the said dealing. When the above judgment was brought to the notice of the Supreme Court in a later case in *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, Vexplaining the decision in *K.K. Narula's case (supra)*, it stuck to the proposition laid down by the Constitutional Bench in *Cooverjee's case (supra)* holding that there is no inherent right in a citizen to sell intoxicating liquor by retail, sounding clearly that liquor trade cannot be called either a business or trade and Article 19(1)(g) is not applicable. This proposition was accepted by a later Constitutional Bench of the Supreme Court in *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, Dealing with a*

contention that the provision contained in Section 43 of the Bengal Excise Act, which empowered the Licensing Authority to withdraw the licence for any reason whatsoever, is unreasonable and violative of the appellant's fundamental right under Article 19, it was held that the right to carry on lawful trade or business is subject to such reasonable conditions as may be considered essential by the appropriate authority for the safety, health, peace, order and morals of the society and principles applicable to trades on which all persons carry on free from regulatory controls do not apply to trade or business in country liquor and this is so because of the impact of this trade on society due to its inherent nature. Another 3-Judge Bench of the Supreme Court in *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, also took the same view and held that the view taken by the Constitutional Bench of the Supreme Court in *Cooverjee B. Bharucha's Case* (supra) that there is no fundamental right to trade in liquor holds good even while referring to *K.K. Narula's case* (supra) and affirming the view in *Harinarain Jaiswal 's case* (supra). In fact, it was explained that in *K.K. Narula's case* (supra), there was no absolute proposition that there was a fundamental right to trade in liquor and what was held was only to say that liquor is also a business but nevertheless it was not held that the right to do that business can be claimed as of right.

In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , another Constitutional Bench of the Supreme Court referred to all the previous decisions, including that of *K.K. Narula's case* (supra) and held that there is no fundamental right to trade or business in intoxicants. It also held that the judgment in *K.K. Narula 's case* (supra) does not negate the right of the State to prohibit absolutely all forms of activities in relation to intoxicants and the wider right to prohibit absolutely would include the narrower right to permit dealing in intoxicants on such terms of general application as the State deems expedient. In *Lakhanlal and Others Vs. The State of Orissa and Others*,), it was held that there was no fundamental right to trade or business in intoxicants and that in all their manifestations, these rights were vested in the State. In *Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others*, , the above proposition was affirmed holding that there is no fundamental right to trade in liquor. Similar is the proposition laid down by the Supreme Court in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, and also in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, In *Nandlal's case* (supra), it was held by the Supreme Court that while there is no fundamental right for any citizen to trade in liquor, but when the State grants privilege to another citizen to manufacture or vend liquor, then it cannot discriminate between a citizen and another and has to act in consonance with equality clause enshrined in Article 14 of Indian Constitution. Similar is the proposition laid down by the Supreme Court in *Doongaji and Co. Vs. State of Madhya Pradesh and others*, With the latest judgment of the Constitutional Bench of the Supreme Court in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, which makes a survey of all the previous decisions, the proposition that liquor trade is not a

fundamental right traceable to Article 19(1)(g) is no more *res integra*. It was held emphatically that potable liquor is an intoxicant and depressant drink which is dangerous and injurious to health and is therefore, an article which is *res extra commercium* being inherently harmful and a citizen has, therefore, no fundamental right to trade or business in liquor. It was held that the trade or business in liquor can be completely prohibited but it is for the State to decide and when the State decides to do business by itself or through agency created by it, a citizen cannot claim any fundamental right to claim the privilege of vending liquor and only when the State wants to part with the privilege of vending liquor to citizens, there cannot be discrimination between the citizens, who are qualified to carry on the said trade or business. It was clearly laid down that no citizen can claim a right to carry on trade or business in potable liquor even if the prohibition is not imposed and that all that a citizen can claim is an equal right to carry on trade or business in potable liquor as against other citizens and in no event, a citizen can claim equal right to carry on business against the State when the State reserves itself the exclusive right to carry on such trade or business. The Supreme Court was so strong on its views that when the above proposition was again raised in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, it has to come down heavily. It is apt to extract the resented expressed in paragraph 39 of the judgment.

"39. The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in *Khoday Distilleries* (1995 (1) SCC 575). It is raised before us again. In *Khoday Distilleries* (supra), this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is concerned to be *res extra commercium* (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs, which are injurious to health. For the same reason, the Bench held, the State can create a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in clauses (e) and (f) of the summary contained in para 60 of the decision. In these clauses, it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise. Seizing upon these observations, Shri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1)(g). If it were not so asked the learned counsel, reference to Article 19(6) has no meaning. We do not think that any such argument can be built upon the said observations. In clause (e), the Bench held, a monopoly in the State or its

agency can be created "under Article 19(6) or even otherwise". Similarly, in clause (f), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed "both under Article 19(6) or otherwise". The said words cannot be read as militating against the express propositions enunciated in clauses (b), (c), (d), (e) and (f) of the said summary. The said decision, as a matter of fact, emphatically reiterates the holding in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*,) that a citizen has no fundamental right to trade in intoxicating liquors. In this view of the matter, any argument based upon Article 19(1)(g) is out of place."

In view of the above authoritative pronouncement of the Supreme Court, which is law under Article 141 of Indian Constitution, the contention of the learned counsel for the petitioners that the petitioners have got fundamental right to claim for the licenses for vending liquor if there is no total prohibition is rejected.

17. POINTS (ii) TO (v) RELATING TO ART. 14: The question whether TASMAL or a Cooperative Society is a "State" under Article 12 of Indian Constitution does not arise for consideration. TASMAL is a company owned by the Government and it need not even be an instrumentality of State and suffice it to state that TASMAL is a company registered under Companies Act and there is no bar under Companies Act for the company with objects to trade in liquor, be it wholesale or retail. The Cooperative Societies act as agents.

A company under Companies Act or a Society registered under the Cooperative Societies Act is not a citizen and the petitioners, who are the citizens, cannot compare themselves to either TASMAL or Cooperative Societies. Even though a Company or Cooperative Society are legal persons and are body corporates to hold or dispose of property and conduct business, subject to limitations stated under the statute governing them, *stricto sensu*, they are not equated to ordinary natural citizens and as such, there is absolutely no legal embargo either for TASMAL or Cooperative Societies to act as agents of the State Government. In fact, there are some judgments rendered by this Court wherein the rights of TASMAL and Cooperative Societies to trade in liquor on preferential basis were upheld. In *Egmore & Nungambakkam Taluk Wine Merchants' Association v. State of Tamil Nadu* (1989 WLR 105), the provisions contained in Section 17C (1) of the Tamil Nadu Prohibition Act conferring exclusive privilege of wholesale vending of IMFL on TASMAL and also preferences to be given to cooperative societies u/s 20B, were upheld. The ratio laid down in the said judgment was upheld by a Division Bench of this Court in *V.R. Govindaswamy v. State Of Tamil Nadu* (1991 WLR 275). In *M.P. Mariappa Nadar & Ors. V. State of Tamil Nadu* rep. by its Secretary, Prohibition & Excise Department (1997 Writ L.R. 814) a Division Bench of this Court while affirming the judgment of the learned single Judge held that there is nothing wrong in giving preference to cooperative societies by nomination for the upset price. It was further held that loss of revenue is no concern for the citizen as the Government, in the context of the co-operative societies, considered the welfare of the members of the co-operative societies

and that profit making alone is not the criterion for the conferment of benefit on the co-operative societies. In *S. Periasamy Vs. The Government of Tamil Nadu and two others*,), it was held that privilege for retail vending in liquor by auction to Co-operative Societies is not invalid. Hence, we do not find any embargo in the State entrusting the retail liquor vending either to TASMAL or Cooperative Societies. It is pertinent to point out that objects of the Cooperative Societies are not at all relevant here. Nothing is brought to our notice placing any legal embargo against any Cooperative Society trading in liquor and in fact this right of cooperative society had been in the statute book since a long. Rule 3, with its two provisos, of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, deal with the grant of privilege and it reads thus,

3. Grant of privilege. - The privilege shall be granted to any person in accordance with the provisions of these rules :

Provided that, where the Commissioner considers it necessary, he may direct the licensing authority to grant, on payment of such sum or fee or both as may be fixed by the Commissioner, the privilege in relation to not exceeding forty per centum of the maximum number of retail vending shops including shops for which eligible applications are not received, permitted by the Government and distributed as far as possible among the various, districts by nomination to the Tamil Nadu State Marketing Corporation or the Tamil Nadu Civil Supplies Corporation or Cooperative Societies. The Tamil Nadu State Marketing or the Cooperative Society interested in the grant of the privilege may apply to the licensing authority in Form VI together with an affidavit in Form II:

Provided further that the licensing authority shall, before nominating any Cooperative Society for the grant of the privilege, cause such verification as it may deem necessary to be made and satisfy itself as to the suitability of that society for the grant of the privilege.

Now that the privilege is done away with from this excise year, the Cooperative Societies are appointed only as agents on payment of commission and that is so clear from the Explanation to the newly inserted Section 17C(1-B)(c)(iii). The Explanation reads as follows:

Explanation.-For the purposes of this Act, a Co-Operative Society appointed as agent by the Tamil Nadu state Marketing Corporation Limited for selling on its behalf, by retail, Indian made foreign spirits, shall not be deemed to be exercising any privilege of selling, by retail, Indian made foreign spirits and accordingly the provisions of this Act relating to the grant of such privilege and licence for selling, by retail, Indian made foreign spirits shall not apply to such agent.

The petitioners cannot be termed as equals to either TASMAL or Cooperative Societies. Even the hotels, clubs and stores and depots run by the Defence Department of Government of India are a class apart and cannot be equated to the citizens like the petitioners as there being a valid classification.

In the circumstances, we find no infraction of equality clause enshrined in Article 14 of Indian Constitution.

18. POINT (vi) RELATING TO ABDICATION OF ESSENTIAL LEGISLATIVE FUNCTIONS: (a) In *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, , the question regarding delegation of legislative powers was gone into. It was held that in dealing with the challenge to the vires of any statute on the ground of excessive delegation, it is necessary to examine whether the impugned delegation involves the delegation of an essential legislative function or power and whether the legislature has enunciated its policy and principle and given guidance to the delegate or not. In every case, it would be necessary to consider the relevant provisions of the Act in relation to the delegation made and the question as to whether the delegation is intra vires or not will have to be decided by application of the relevant tests.

(b) In *Akadasi Padhan Vs. State of Orissa*, , it was held that a State monopoly in respect of any trade or business must be presumed to be reasonable and in the interest of general public so far as Article 19(1)(g) is concerned. It was held that when the State carries on any trade, business or industry, it must inevitably carry it on either departmentally or through its officers appointed in that behalf. In the very nature of things, the State as such, cannot function without the help of its servants or employees and that inevitably introduces the concept of agency in a narrow and limited sense. Just as, the State can appoint a public officer to carry on the trade on its behalf, so can it appoint an agent to carry on the trade on its behalf. Normally and ordinarily, the trade should be carried on departmentally or with the assistance of public servants appointed in that behalf. But there may be some trades or businesses in which it would be inexpedient to undertake the work of trade or business departmentally or with the assistance of State servants. In such cases, it would be open to the State to employ the services of agents, provided the agents work on behalf of the State and not for themselves. Therefore, if a law is passed creating a State monopoly and the working of the monopoly is left either to the State or to the officers of the State appointed in that behalf or to the department of the State or to persons appointed as agents to carry on the work of the monopoly strictly on behalf of the State, that would satisfy the requirements of Article 19(6)(ii).

(c) Dealing with the permissibility of the extent of delegation of legislative powers a two Judge Bench of the Supreme Court in *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, held that the increasing complexity of modern administration and the need for flexibility capable of rapid re-adjustment to meet changing circumstances have rendered it convenient and practical, nay necessary, for the Legislatures to have frequent resort to the practice of delegating subsidiary or ancillary powers to delegates of their choice. The delegation of legislative power is however, permissible only when the legislative policy and principle is adequately laid down and the delegatee is only empowered to carry out the subsidiary policy within the guidelines laid down by the

Legislature.

In the light of the above stated principles, we shall now examine as to whether there is an abdication of essential legal functions by the State. As seen from the above legal principles enunciated, the State itself need not run the business through its officers. It can entrust to another agency to deal on its behalf. TASMAG is a company registered solely for that purpose. Firstly, entire wholesale liquor was entrusted to it and the challenge to such an action was already negated. It is not that State has completely left the matter to the whims and fancies of TASMAG. In Section 17C(1-B)(b), it is specifically stated that the Commissioner of Excise shall be the authority to grant licence to TASMAG and such licence shall be subject to the Rules made by the Government in this behalf and also to such restrictions and conditions as the Commissioner may, from to time, specify. There are also guidelines indicated in Section 17C(1-B)(c) that TASMAG shall fix, locate and open as many shops as may be necessary to effectively carry on the business of sale, by retail, of Indian Made Foreign Spirits in the State by taking into account the population of the locality, the needs of the locality and other relevant factors. Even while empowering TASMAG to entrust the retail vending to Cooperative Societies, as agents, sufficient guidelines have been set. It cannot be said that any uncanalised, uncontrolled and unguided power has been delegated to TASMAG or for that reason, to the Cooperative Societies. In the circumstances, we are unable to accede to the contention that there is an abdication of essential legislative functions by the State.

19. POINT (vii) RELATING TO OBJECTS AND REASONS: No statute enacted by any legislative body needs to contain any objects and reasons. What is necessary is the body of the statute and the approval of the same by the majority in the legislative bodies, be it Parliament or in the State Legislature. This is of course subject to the legislative competence and the statute being in conformity with Part III of Indian Constitution. We have already held that there is no infringement of fundamental rights. Legislative competence is not doubted. While the learned Additional Advocate General relies upon the judgment rendered by the Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and *Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa*, Mr. K.M. Vijayan, learned senior counsel appearing for some of the petitioners, has heavily relied upon the judgment rendered by the Supreme Court in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu* and another,

In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, a 5 Judge Constitutional Bench of the Supreme Court held that Statement of Objects and Reasons seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of Members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby

sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the legislature for they do not form part of the Bill and are not voted upon by the members. The statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute.

In *Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa*, a Division Bench of the Supreme Court held that the validity of a statutory notification cannot be judged merely on the basis of Statement of Objects and Reasons accompanying the Bill nor it could be decided by the Government Policy taken from time to time. The executive policy of Government or the Statement of Objects and Reasons of the Act or Ordinance cannot control the actual words used in the Legislation.

From the above propositions laid down by the Supreme Court, it is clear that when the Statute is clear and unambiguous and it does not admit of any doubt, then we need not look into Objects and Reasons and even if there are some aspects mentioned under Objects and Reasons, they should not be taken as guidance for the interpretation of the provisions in the Statute.

The proposition laid down by the Supreme Court in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu* and another, is distinguishable as Objects and Reasons stated in the Preamble deeming "horse racing" as gambling and extra commercium clothe the same with the protection under Article 31C of Constitution. An argument was raised that protection cannot be afforded as "horse racing" does not amount to gambling and in order to demonstrate that Article 31C is not available, contentions were considered in that regard and scanning the Act in that perspective, it was held that Objects and Reasons are non-existent for the enactment. The said judgment in *Dr. Lakshmanan's* case (*supra*) has to be only understood in the above manner and not otherwise. No abstract proposition can be drawn from *Dr. Lakshmanan's* case (*supra*) that in each and every statute, Objects and Reasons have to be looked into or that statutory provisions have to satisfy the Objects and Reasons on factual basis. There is no such constitutional requirement. Hence, we discard this argument.

20. POINT (viii) RELATING TO ACCRUAL OF RIGHTS: Legislation can be prospective or retrospective and can sustain the constitutional onslaught provided the same is within the legislative competence, in consonance with fundamental rights enshrined in Part III of the Constitution and overall, in tune with constitutional scheme. While considering the rights of the citizens, the relevant factor is whether the rights are defeasible or indefeasible. No doubt, the State has invited applications by issuing G.O.Ms. Nos. 243, 244 and 245 dated 4.10.2003 pursuant to which the petitioners have submitted applications with Rs. 500/-and also deposited 50% of the privilege amount. But that itself cannot create any indefeasible right in the applicants as the State is not cancelling the above G.Os. for the purpose of inviting fresh applications. As the State has got right to create monopoly for itself, it has enacted a law by which all applications abate. But the applicants are entitled not only for refund but also reasonable

interest on the above amounts and the State cannot deny the same. While the State has the right not to proceed further with the applications and decide to refund the amount before the accrual of any right to the applicants, it cannot be unreasonable to leisurely refund the amount and that too without any interest. If the amounts have already been refunded it is fine. But if they have not been refunded, then they have to be refunded with interest at 15% from the date of deposit till the date of payment. But this we are speaking of only the applicants other than block-period licensees.

21. POINT (ix) WHETHER A COLOURABLE LEGISLATION: Independence of judiciary is a basic feature of the Constitution. Article 50 read with Articles 245 and 246 of the Constitution imposes a bar on a legislative action encroaching upon the judicial functions or enacting law annulling judicial verdict. But when a judicial decision points out lacunae in any of the Acts, be it of the Parliament or the State Legislature, the said legislative bodies can legislate even with retrospective effect filling up the said lacunae and validating the actions which otherwise would remain invalid. Such legislative acts shall be subject to possessing legislative competence, not violating Part III of the Constitution or any of the constitutional provisions or the constitutional scheme. If any executive or legislative action is annulled by the Court and a mandamus is issued, there cannot be any legislative Act to interdict the said direction. There is a catena of decisions on this point but it is not necessary to burden this judgment with all the said precedents. Suffice it to mention some important judgments rendered by the Supreme Court on this point.

(a) In *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, a Constitutional Bench of the Supreme Court was dealing with imposition of taxes by a Municipality in the State of Gujarat. Under the Rules, the tax was to be levied at a rate prescribed computed on the annual value of the lands or building. But when an imposition was made prescribing percentage of the valuation based upon the capital, the Rules were challenged by filing writ petitions and during the pendency of the writ petitions, the Legislature of the Gujarat passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. The same was challenged but unsuccessfully. It was held by the Supreme Court that the basis of the lacunae pointed out by the earlier Supreme Court judgment was removed by the Validating Act by validating the assessments made on the basis of a different method i.e. a percentage on the capital value, and that did not amount to encroachment on judicial powers of the State.

(b) In *Comorin Match Industries (P) Ltd. Vs. State of T.N.*, the matter related to the amendment to Central Sales Tax Act. In the turnover of the assessee was included the excise duty and that was challenged and the challenge was upheld by the Madras High Court. Then the amendment was brought by Amending Act of 1969 and the same was challenged. But the Supreme Court held that the amendment does not amount to encroaching upon the judicial powers of the State but on the other hand validate the action with retrospective effect and as

the basis of the judgment has been taken away, there was no constitutional violation.

(c) In *Indian Aluminium Co. etc. etc. Vs. State of Kerala and others*, a surcharge was collected on supply of electrical energy, which was invalidated on the ground of lack of legislative provision, was validated by Section 11 of the Kerala Electricity Surcharge (Levy and Collection) Act, 1989. The Section read,

"11. Validation.- (1) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court, the levy and collection of surcharge by the Board or other licensees on or after the 1st day of October, 1984 and before the 1st day of August, 1988 under the Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Order, 1984, shall be deemed to be, and deemed always to have been validly levied and collected as if the said order was a notified order u/s 3....."

The said validating provision was upheld by the Kerala High Court and affirmed by the Supreme Court.

(d) In *State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd.*, a Constitution Bench of the Supreme Court surveyed all the previous case laws touching upon the effect of Amendment Acts, while dealing with the validity of Section 5 of Tamil Nadu Act 7 of 1974 amending Tamil Nadu Act 39 of 1972. The dispute related to the date of vesting and under the principal Act, the vesting takes place on the date of the publication of the notification. But the Amending Act substituted the same and the effect was that date of vesting was to take place on the date of the commencement of the Amending Act i.e. 1.3.1972, whereby the excess land owner was to get more compensation, which was ordered by the High Court. Later on, Amendment Act was brought forth repealing the Amending Act and restoring the original position of vesting of the property only on the date of publication of notification. This was challenged and the matter ultimately landed in the Supreme Court. The Supreme Court held that there is no annulment of the judgment of the High Court and only the basis of the judgment has been taken away. The amending provision reads,

5. Certain provisions of Tamil Nadu Act 7 of 1974 not to have effect. - (1) Notwithstanding anything contained in the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act, 1972 (Tamil Nadu Act 7 of 1974), or in any judgment, decree or order of any court or other authority, sub-Section (2) of Section 3 of the 1972 Act shall be omitted and shall be deemed always to have been omitted....."

(e) In the latest judgment of the Supreme Court *National Agricultural Co-operative Marketing Federation of India Ltd. and Another Vs. Union of India (UOI) and Others*, Cooperative Societies have challenged the action in amending Income Tax Act in the year 1999. The words, "belonging to" were making a difference in the manner of taxation but the authorities had been interpreting the said words as "grown by". The challenge to the said action of the authorities has

failed before the Gauhati High Court but later on the Supreme Court overruled the said decision in the year 1998 which necessitated Amendment and that was how the Income Tax (2nd Amendment) Act, 1999 (Act No. 11 of 1999) was enacted with retrospective effect. The said Amendment was upheld by the Supreme Court on the ground that there was no encroachment on the judicial powers and by such Amendment, the judicial decision rendered by the Supreme Court was not set aside but basis of the judgment which was dependant upon the interpretation of the statute, was altered.

(f) To the same effect is the another latest judgment of the Supreme Court in *Bakhtawar Trust and Others Vs. M.D. Narayan and Others*, The matter relates to construction of building complex at Bangalore. Under the pre-amended Zonal Regulations, the height of any building could not be more than 55". But the height of the building complex was more than that and that resulted in writ petitions being filed and even allowed. The matter went up to the Supreme Court but of no avail. Thereafter, the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996, was enacted fixing the maximum height of the building at 165" with retrospective effect. The argument was that such legislation amounted to setting aside of the judgment of the High Court, which was affirmed by the Supreme Court. Repelling the said argument, the Supreme Court held that the Validation Act has removed the basis of the judgment as the earlier judgments were based upon the then existing law of restriction of height upto 55" and the Amending Act removes the same with retrospective effect altering the height from 55" to 165" and as such, the basis of the judgment is altered and that the legislative action was intra vires the Constitution.

From the above decisions it is clear that whenever Courts pointed out that something is wanting in the statutes, then that can be set right by removing the deficiency by amending the laws, even retrospectively.

22. We shall now refer to another line of judgments where it was held that the Amendment Acts were an affront to the judicial verdicts thus encroaching on the judicial power of the State and were held to be impermissible in our constitutional scheme.

(a) In *The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, a similar question arose. In the said case, some companies, who own properties, were assessed to property tax by the Municipal Corporation of City of Ahmedabad. Those assessments were done on the basis of the method popularly known as Flat Rate Method. Pursuant to the assessment made the tax was collected. The High Court did not grant relief, and then matters landed before the Supreme Court. The Supreme Court held that it was not permissible for the Corporation to value the premises on the basis of the floor area nor it could take into consideration the value of lands and machineries in determining the rateable value of the lands and buildings. The State of Gujarat brought into force an Act titled "Bombay Provincial Municipal Corporation (Gujarat Amendment) Act, 1968. This Act was enacted to avoid the

refunds ordered consequent to setting aside of the assessments. The High Court of Gujarat allowed the petitions. The matter ultimately landed in Supreme Court. The Supreme Court upheld the judgment of the Gujarat High Court on the ground that the basis of the judgment earlier rendered was not altered and on the other hand, the amendment sought to nullify the judgment earlier rendered by the Supreme Court. The prerequisite for collection of tax was assessment and the assessment order was not passed but the Amendment was brought forth authorising the authorities to retain the amounts so collected without passing any assessment orders.

(b) In *State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others*, the case arose under Madras Entertainments Tax (Amendment) Act, 1939 as amended by the Act 1966. Under the Original Act the re-assessment was not provided and the same was set aside by the High Court and the said Judgment became final. Thereafter, the State Legislature amended Section 7 with a non-obstante clause, which reads,

"Notwithstanding anything contained in this Act or in the principal Act or in any judgment, decree or order of any Court no assessment or re-assessment or collection of any tax due on any payment for admission to any entertainment or any cinematograph exhibition, which has escaped assessment to tax, or which has been assessed at a rate lower than the rate at which it is assessable, u/s 4 or 4A of the principal Act, made at any time after the date of the commencement of the principal Act and before the date of the publication of this Act in the gazette shall be deemed to be invalid or ever to have been invalid on the ground only that such assessment or re-assessment or collection was not in accordance with law and such tax assessed or re-assessed or collected or purporting to have been assessed or re-assessed or collected shall for all purposes, be deemed to be and to have been always validly assessed or reassessed or collected".

It was held that the said amended Section 7 of the Act did not change the law retrospectively and that the effect of the said provision is to over rule the decision of the Madras High Court as the provision reads that notwithstanding any judgment of the court, the re-assessment invalidly made must be deemed to be valid. The offending provision was thus set aside.

(c) In *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, a 7-Judge Bench of the Supreme Court was considering the effect of the Mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay cash bonus for the year 1973-74 to its Class III and IV employees in terms of the settlement dated 24.1.1974. On 29.3.1974, a circular was issued by the Life Insurance Corporation for payment of bonus in accordance with the settlement along with the salary in April. Bonus was paid for the year 1973-74 and again for the year 1974-75 according to the settlement. On 25.9.1975, the Payment of Bonus Amendment Ordinance was promulgated, upon which payment of bonus for the year 1975-76 was withheld. Writ Petitions were filed in the High Court of Calcutta and the same were allowed recognising the

right of the employees for payment of the bonus for the year 1975-76 which had become payable along with the salary in April 1976 and the High Court ordered that it must be paid to the employees. The judgment of the High Court was on 21.5.1976. On 29.5.1976, the Ordinance was substituted by the Act titled Life Insurance Corporation Modification of Settlement Act, Act 72 of 1976, denying to the employees the right which had been recognized by the Settlement approved by the Central Government and acted upon by the actual payment of bonus to the employees and finally, converted into a right under the decision of the Calcutta High Court. When the matter went to Supreme Court, it was held by the Supreme Court that the amendment was a legislative judgment making in-roads into the judicial judgment and was held to be impermissible under the Constitution.

(d) In the In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, , a Constitution Bench of the Supreme Court held that the order passed by the Tribunal could not have been nullified by an Ordinance promulgated by Karnataka. The Court relied upon the judgment in The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc., M.M. Pathak's case (supra).

(e) In S.R. Bhagwat and others, Vs. State of Mysore, it was held by a 3 Judge Bench of the Supreme Court that the judgments attaining finality were binding against the State and they cannot be overruled by any legislative measure. The issue related to seniority, which was not accepted by the State, but ultimately allowed by a Division Bench of the Mysore High Court. The same was sought to be taken away by the Mysore State Civil Services (Regulation of Promotion, Pay and Pension) Ordinance No. 1 of 1973, which later culminated into the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973. By the said impugned provisions, the actual financial benefits directed to be made available to the petitioners pursuant to the orders of the Division Bench of the High Court, which had become final, were sought to be taken away.

(f) In G.C. Kanungo and D.C. Routray Vs. State of Orissa, it was held by a two Judge Bench of the Supreme Court that Legislature cannot enact a law rendering judicial decisions ineffective. It was further held that judicial power of State exercisable by courts under the Constitution as sentinels of Rule of Law is a basic feature of the Constitution. In the said case a dispute between a contractor and the Government regarding payment of amount was tried by the arbitrators appointed under the Arbitration (Orissa Amendment) Act, 1984. Under the said Act two Special Arbitration Tribunals were constituted by the State Government and the said tribunals have passed awards one in the year 1988 and another in the year 1989. The Sub-Judge, before whom the two awards had come to be placed, made them "Rules of Court" by his judgment and decrees. The "Rules of Court" so made in relation to each award by the Court of Sub Judge have been affirmed by the High Court of Orissa. Thereafter, Government of Orissa preferred S.L.Ps. In one case SLP was dismissed and in another case special leave was

granted allowing the petitioner to take 25 lakhs out of the amount payable under the award. The award, which became final with the dismissal of the SLP by the Supreme Court was sought to be executed. Meanwhile, the Government of Orissa promulgated the Arbitration (Orissa Amendment) Ordinance, 1991, amending the Principal Act in its application to the State of Orissa and the same was later replaced by the Act of 1991, nullifying the above said two awards and directing the petitioners therein to get the arbitral disputes resolved afresh by the Arbitration Tribunal constituted under the Principal act as stood amended by the 1982 Amendment Act. The offending provision was struck down.

(g) In *K. Sankaran Nair (Dead) through Lrs. Vs. Devaki Amma Malathy Amma and Others*,) it was held that Kerala Land Reforms (Amendment) Act 1979 amending Section 6C having not made applicable retrospectively, the earlier decisions and judgments rendered cannot be knocked off. Binding judgments having become final prior to 7th July 1979 (i.e., the date of inserting of Section 6-C,) cannot be whittled down by sweep of Section 6C of the said Act. It was held that legislature couldn't overrule any judicial decision without removing the substratum or the foundation of that judgment by a retrospective amendment of the concerned legal provision. Section 6-C, started with a non-obstante clause and sought to remove the prohibitive effect of Section 74. If that legislative exercise is to succeed effectively, then Section 74 should have been either deleted from the Statute Book with retrospective effect from 1st April 1964 when the Kerala Land Reforms Act, the parent Act, came into force or at least from 1.1.1970 when the Amendment Act, 1969 came on the Statute Book and on which date the concerned person, who claimed deemed tenancy u/s 6-C was required to be in possession of the land. However, the Legislature in its wisdom did not think it fit, while bringing on the Statute Book Section 6-C from 7th July 1979, to either give it retrospective effect from 1.1.1970, or to delete Section 74 retrospectively at least from 1.1.1970 if not from an earlier date of 1st April 1964 when the parent Act itself was brought on the Statute Book. Consequently, the non-obstante clause introduced in Section 6-C for by passing the final judgments, decrees or orders of any court against any persons remained in the realm of an abortive or an incompetent exercise on the part of the Legislature. To recapitulate the earlier decision rendered against the appellant could have been effectively displaced by the Legislature by enacting Section 6-C if the very foundation or substratum of those earlier judgments was knocked off by the Legislature by enacting a competent piece of legislation, as stated above.

(h) In *The State of Maharashtra and Others Vs. Kumari Tanuja*,) it was held by the Supreme Court that judicial decision could not be rendered ineffective by executive fiat. In the said case, the High Court held that the Bawa Community from Sindh was a nomadic tribe in the State of Maharashtra. On 1.4.1987 the Government issued a G.O. declaring by way of clarification that Bawa Community of Sindh is excluded from the list of nomadic tribes. It was held that the said declaration was an affront to the judicial verdict, and as such was set aside.

23. In the light of the decisions which have been referred to in paragraphs 22 and 23 (reported in The Secretary to Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai and The Licensing Authority, The Asst. Commissioner (Excise), Virudhunagar District, Virudhunagar Vs. K. Vinayagamurthy, , we shall now consider as to whether the Amending Act is in the nature of removing the basis of our judgment dated 24.7.2002, which was upheld by the Supreme Court by order dated 26.8.2002 in SLP Nos. 14735 of 2002 etc. As already stated above, from the year 2001 onwards, Block Period of 3 years was created in which the licensees were assured of renewal for the second and third years on payment of the escalated privilege amounts. When the policy was sought to be changed, writ petitions were filed and this Court upheld the rights of the licensees under the Block Period and their entitlement for renewal subject to the payment of the privilege amount by 31.7.2002. That was appealed against by the State and in the aforesaid judgment, the Supreme Court has upheld the judgment of this Court with regard to the vested right of the Block Period licensees. That vested right continues upto the expiration of the Excise Year 2003-2004. It is not disputed that the said Block Period licensees, who had remitted the amount before 31.7.2002 and whose rights have been recognised by the Government in G.Os. issued on 4.10.2003 have remitted the application fee and also the requisite privilege amount and they were waiting for their right to get the licenses. Now, we have to solve a dispute as to whether Block Period Licensees are only 284, who have remitted the whole of the privilege amount before 31.7.2002 or inclusive of 595, who had remitted the amount pursuant to the later orders of this Court dated 25.9.2002 (reported in K. Ramanathan Vs. The State of Tamil Nadu, which was the subject matter of the order of the Supreme Court in SLP No. 19277 of 2002 and batch. By a bare reading of the said judgment though it appears that all the licensees of the Block Period, who had remitted the amount even beyond 31.7.2002 but within the time prescribed by us, were entitled for renewal of the licence, a close reading of the said judgment of the Supreme Court coupled with the earlier judgment dated 26.8.2002 makes a distinction between the Block Period licensees, who have remitted the amount before 31.7.2002 and those who have remitted later. In so far as the Block Period licensees, who had remitted the entire privilege amount before 31.7.2002 is concerned, they were entitled as of right. But those who have remitted the amount beyond 31.7.2002 were made entitled only because of concession given by the State Government through its counsel before the Supreme Court. This is the vital distinction and that is why are unable to accede to the contention that even 595 Block Period licensees, who have paid the privilege amount beyond 31.7.2002 are also entitled for renewal for the Block Period as of right. In the circumstances, we hold that 284 Block Period licensees alone are entitled for the renewal of licence for the Excise Year 2003-2004. This right cannot be scuttled by the Amending Act and the Amending Act is not in the nature of removing the basis of our judgment, which was affirmed by the Supreme Court. It directly nullifies the judgments and encroaches upon the judicial power. Such legislative judgment annulling the judicial decisions are

impermissible in our constitutional scheme and as such, we hold that the Amending Act is inoperative in so far as the 284 Block Period licensees are concerned.

24. POINT (x) RELATING TO DOCTRINE OF SEVERABILITY: The Cooperative Societies had been conducting their business in liquor trade and it is not new. We have already mentioned above the origin and details, including the judicial precedents upholding the right of the cooperative societies to trade in liquor. We have also upheld the agency which TASMAL may ultimately confer on the cooperative societies. Whether it is TASMAL or Cooperative Societies, a specified number of shops are going to be set up and in fact have been set up in most of the areas. In the matter of selling the liquor by retail, there should not be any difficulty for TASMAL or Cooperative Societies to sell in their respective shops while other shops in which 284 Block Period Licensees have set up the shops will continue their retail liquor vending. The renewal of the licence to 284 Block Period Licensees will not render the policy of the Government to run the remaining shops either through TASMAL or Cooperative Societies invalid. In the result, while upholding the Amending Act, we hold that for the Excise Year 2003 - 2004, the State Government is liable to renew the licenses in favour of 284 Block Period Licensees. As already stated above, for the remaining applicants, the amounts shall be refunded with 15% interest as stated above, if not already refunded. All the writ petitions are disposed of accordingly.