

(2001) 03 SC CK 0129

In the Supreme Court Of India

Case No : Writ Petition © No: 321 of 2000

M/s. Ugar Sugar Works Ltd.

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Companies Act, 1956 — Section 5, 26, 34, 35

Delhi Liquor Licence Rules, 1976 — Rule 16

Constitution Of Indian, 1950 — Article 14, 16, 19(1)(g), 32, 47

Citation : AIR 2001 SC 1447 : (2001) AIRSCW 1284 : (2001) 4 JT 31 : (2001) 2 SCALE 534 : (2001) 3 SCC 635 : (2001) 2 SCR 630 : (2001) 2 Supreme 459

Hon'ble Judges : A. S. Anand, C.J.;V. Patil, J;R.C. Lahoti, J

Bench : Full Bench

Advocate : P.P. Mahotra, Dinesh Kumar, Shelendra Sharma and Shirish Kumar Misra, for the Appellant; K.N. Shukla, Sr.Adv., Ms. Rekha Pandey and D.S. Mahra, for the Respondent

Final Decision : Dismissed

Judgement

Dr. A.S. Anand, CJI.

1. Whether impugned notification issued by Respondent No. 2 laying down terms and conditions for registration of different brands of Indian Made Foreign Liquor (IMFL) for supply within the territory of Delhi during 2000-2001 and laying down Minimum Sales Figures (MSF), as a criteria of eligibility for grant of licence in form L-1, is violative of Article 14 16 and 19(1)(g) of the Constitution, is the short question raised in this Writ Petition filed under Article 32 of the Constitution.

2. The petitioner is a Company incorporated under the Companies Act, 1956 having its registered office in Sangli, Maharashtra. It is engaged in the business of manufacture of IMFL and holds L-1 licence for supply of its various brands of liquor for vending within the territory of Delhi.

3. The trade and business of liquor in National Capital Territory of Delhi is governed by Punjab Excise Act, 1914 (hereinafter referred to as 'the Act') and

the grant of licence for vending liquor is regulated by Delhi Liquor Licence Rules, 1976 (hereinafter "the Rules"). Respondent No. 1 - Delhi Administration in exercise of its powers u/s 5 of the Act has been taking policy decisions from time to time and issuing notifications dealing with Registration of Brands and Eligibility of Brands of IMFL for its sale in the National Capital Territory of Delhi. The eligibility for grant of licence L-1, which enables the supplier to supply his brands of IMFL in Delhi, is regulated by those policy decisions and includes compliance with specific MSF requirements for a particular year. According to the petitioner, the policy of Delhi Government pursuant to which impugned notification, laying down MSF criteria for the year 2000-2001 has been issued, is arbitrary and discriminatory as against small scale manufacturers and has no nexus with the object of providing liquor of good quality for consumption within the territory of Delhi and is as such violative of Articles 14 16 and 19(1)(g) of the Constitution and, thus, liable to be declared invalid and unconstitutional.

4. Before we proceed to examine the challenge to the policy of Delhi Government, on the basis of which the impugned notification laying down MSF requirements for supply of various brands of liquor in Delhi has been issued, we may first refer in short to the previous history of the case.

5. In 1996 the petitioner filed Civil Writ Petition No. 483/1996 challenging MSF requirements fixed for that year. Rule nisi came to be issued. That petition has remained pending. Delhi Wine Merchants Association filed an SLP against an order of the Delhi High Court upholding MSF requirements through its judgment dated 25.4.1996 in Civil Writ Petition No. 4843 of 1995. That SLP is also pending. Both these cases pertain to the challenge to the notification issued for the period 1996-97. The present writ petition has put in issue the notification issued for the year 2000-2001 fixing enhanced MSF requirements as a condition of eligibility to get L-1 Licence. The grounds of challenge in all the three cases are similar.

6. Through the impugned notification MSF requirement for the lowest price tag has been raised from 60,000 cases (7.2 lac bottles) to 75,000 cases (9 lac bottles) over the previous year's MSF requirements for the 'lowest price tag' brand of liquor and this raise, according to the petitioner is unfair, unreasonable, arbitrary and violative of Articles 19(1)(g) and 14 of the Constitution.

7. Let us first examine some of the statutory provisions dealing with the issue. Respondent No. 1 is empowered by Section 5 of the Act to issue notifications laying down maximum/minimum quantity of any intoxicating liquor which may be sold either in retail or in wholesale in the territory of Delhi. Section 5 provides:

"5. Power of the Lieutenant Governor to declare limit of sale by retail and by whole sale. - The Lieutenant Governor of Delhi may by notification declare, with respect either to the whole of the Union Territory of Delhi or to any local area comprised therein and as regards purchases generally or any specified class of purchases and generally or for any specified occasion maximum or minimum quantity or both of any intoxicant which for the purposes of this Act may be sold

by retail and by wholesale."

8. Section 26 of the Act deals with the sale of intoxicants and provides as follows:

"Section 26 - Sale of intoxicants - No liquor shall be bottled for sale and no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf provided that:

(1) a person licensed u/s 20 to cultivate the hemp plant may sell without a licence those portions of the plant from which any intoxicating drug can be manufactured to any person licensed under this Act to deal in the same or to any officer whom the Financial Commissioner may appoint in this behalf;

(2) a person having the right to the tari drawn from any tree may sell the same without a licence to a person licensed to manufacture or sell tari under this Act;

(3) on such conditions as the Financial Commissioner may determine a licence for sale under the Excise Law for the time being in force in other parts of the whole of the India except Part B States may be deemed to be a licence granted in that behalf under this Act;

(4) nothing in this section applies to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease."

9. Section 34 of the Act provides for fees, terms, conditions and form of duration of licences, permits and passes.

10. Section 35 of the Act deals with the conditions for grant of licence for sale of intoxicants and provides:

"Section 35 - (1) Grant of licence for sale - Subject to the rules made by the Financial Commissioner under the power conferred by this Act, the Collector may grant licences for the sale of any intoxicant within his District.

(2) Ascertainment of public opinion - Before any licence is granted in any year for the retail sale of liquor for consumption on any premises which have not been no licensed in the preceding year, the Collector shall take such measure in accordance with rules to be made by the State Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licensing of such premises.

(3) A licence for sale in more than one district of the Punjab (Haryana) shall be granted by the Financial Commissioner only."

11. Rule 16 of the Rules aims at controlling the quality of liquor and lays down:

"Quality of Liquor - (i) The liquor shall be of good quality which shall be subject to periodical analysis, and the licensee shall be bound to take all possible steps to remedy the defects which the Collector of Excise may consider material and

the licensee shall thereon report to the Collector of Excise after rectification.

(ii) The licensee shall ensure that if any country liquor received in the Bonded Warehouse is of inferior quality, he shall refrain from issuing it and shall immediately report the matter to the Excise Officer, Bonded Warehouse. The said Excise Officer shall cause samples to be taken of such liquor and submit a report to the Collector of Excise who may get these samples analysed by the Chemical Examiner.

(iii) In case the country liquor is declared by the Chemical Examiner as unfit for human consumption or below quality, it shall be disposed of in such manner as may be directed by the Collector of Excise.

(iv) The licensee shall not store or sell any liquor which does not conform to the specifications required in an order made by the Excise Commissioner with the provisions approval of the Lt. Governor, or if no such order has been made, which does not conform to the specifications laid down by the Indian Standards Institution.

(v) The Excise Commissioner shall fix the price of Country Liquor applied to the BWH by different Distilleries, and, if necessary the prices shall be fixed Brandwise.

Substituted vide Notification No. F.10/68/80 - Fin (G) dated 18.4.1980."

Having noticed some of the relevant provisions of the Act and the Rules, we now consider the validity of the challenge to the impugned notification as raised before us.

12. That there is no fundamental right to trade in intoxicants, like liquor, has been conclusively held by this Court in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, where taking note of some of the earlier Constitution Bench decisions of this Court, the argument that a citizen of this country has a fundamental right to trade in intoxicant liquor was once again emphatically repelled. That issue is, thus, no longer *res integra*. The following observations of the Bench in *McDowell's case* (*supra*) are educative:

"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 Ltd. and Others Vs. State of Karnataka and Others*, . It is raised before us again. In *Khoday Distilleries*, 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 considered 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

treat 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 Shanker*, (1975) 1 SSC 737, 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."

(Emphasis ours)

13. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , Chandrachud, J. (as the learned Chief Justice then was) in para 53 of the judgment opined:

"In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in *Balsara's case* (supra), *Cooverjee's case* (supra), *Kidwai's case* (supra), *Nagendra Nath's case* (supra), *Amar Chakraborty's case* (supra) and the *R.M.D.C. case* (supra), as interpreted in *Harinarayan Jaiswal's case* (supra) and *Nashirwar's case* (supra). There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants -- its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In "American Jurisprudence", Volume 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control (page 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime (pp.539, 540, 541)."

(Emphasis supplied)

14. In Har Sharnker's case (supra) after considering decisions of five Constitution Benches, the law was summed up thus:

"These unanimous decisions of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities. The contention that the citizen had either a natural or a fundamental right to carry on trade or business in liquor thus stood rejected."

(Emphasis supplied)

15. In view of this settled position of law, any argument impugning the policy decision of the State Government, as reflected in the impugned notification, based upon Article 19(1)(g) is totally out of place and merits outright rejection and we have no hesitation in doing so most emphatically.

16. Faced with the settled legal position that there is no fundamental right to trade in liquor, learned counsel for the petitioner did not pursue the argument based on Article 19(1)(g) to question the competence of Delhi Administration to take a policy decision with regard to regulating trade in liquor and laying down various regulatory measures and in our opinion rightly so. Learned counsel, however, mounted his challenge to the impugned notification based on Article 14 principally on the ground that the policy as reflected in the impugned notification was irrational and that raising of MSF requirements over the previous years' figures with a view to regulate the "quality of liquor" being sold in Delhi was arbitrary and has no nexus with the object sought to be achieved viz., to provide liquor of good quality to the consumers in the National Capital Territory of Delhi. It was also urged that the policy is discriminatory and as a result of the policy, small scale manufactures with good quality of liquor, were likely to be deprived of their marketing brand within the potential market of Delhi, in case they do not achieve the prescribed MSF outside Delhi and that would result in leaving the field wide open only for big business houses who would retain their monopoly in Delhi market.

17. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial

restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

18. In *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others*, , noticing the jurisdictional limitations to analyse and fault a policy, this Court opined that:

"The court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls."

19. It would also be prudent to recall the following observations of Lord Justice Lawton in *Laker Airways*, 1977 (2) WLR 234 , while considering the parameters of judicial review in matters involving policy decisions of the executive:

"In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given him by statute or the common law. If he is declared by a court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as Parliament gives him the powers he wants. In a case such as this I regard myself as a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play."

20. In the present case the executive policy regulating the sale of liquor in the territory of Delhi is sought to be challenged by the petitioner on the ground that it is 'unfair' and 'unreasonable' besides being 'arbitrary' and has no nexus with the object sought to be achieved. We are unable to agree.

21. The State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is 'liquor of good quality' in the interest of health, morals and welfare of the people. One of the modes for determining that the quality of liquor is 'good' is to ascertain whether that particular brand of liquor has been tested and tried extensively elsewhere and has found its acceptability in other States. The manner in which the Government chooses to ascertain the factor of higher acceptability, must in the very nature of things, fall within the discretion of the Government so long as the discretion is not exercised mala fide, unreasonably or arbitrarily. The allegations of mala fide made in the writ petition are totally bereft of any factual matrix and we, therefore, do not detain ourselves at all to consider challenge on that ground. In fairness to learned counsel for the petitioner we may record that challenge to notification on grounds of mala fide was not pressed during arguments. Laying down requirement of achieving minimum sale figures of a particular brand of liquor in other States, as a mode for determination of the "acceptability" of that

brand of liquor, is neither irrelevant, nor irrational or unreasonable. It appears that prescription of MSF requirement is aimed at allowing sale of only such brands of liquor which have been tested, tried and found acceptable at large in other parts of the country.

22. The policy objective as reflected in the impugned notification is to provide liquor of good quality in Delhi. The executive policy to determine whether a particular brand of liquor is of good quality or not, on the basis of larger acceptability of the particular brand in other parts of the country, appears to us to be a fair and relevant mode. The manner for determining whether a particular brand of liquor has acquired larger acceptability or not so as to qualify for it being "liquor of good quality" has to be decided by the State in its discretion so long as the manner adopted by the State is "just, fair and reasonable". It is not in dispute that the criteria of MSF is being uniformly applied and no pick and choose policy has been adopted by the State in that behalf. Learned counsel for the petitioners has been unable to convince us that fixation of MSF requirements as a criteria for such determination is in any manner "unfair, irrational or unreasonable".

23. The argument that since MSF laid down for the year 1994-1995 were not changed till 1998-99, there was no need to increase MSF requirements in 1999-2000 or to further increase the same in the year 2000-2001 for the lowest price tag brand of liquor from 60,000 cases (7.2 lac bottles) to 75,000 cases (9 lac bottles) for the current year, suffers from the basic infirmity that it invites the court to enter into an area of testing the executive policy, not on grounds whether it is "just, fair and reasonable", but whether the object could not have been achieved by fixing a lower MSF requirement. In other words Court is being invited to prescribe MSF requirements in exercise of its power of judicial review. That is not permissible and we must decline the invitation to enter that area. It is not within the province of this Court to lay down that the executive policy must always remain static, even if its revision is "just, fair and reasonable". What is relevant is to find out whether the executive action is mala fide, unreasonable or irrational as a criterion. As already observed the Court, in exercise of its power of judicial review, cannot sit in judgment over the policy of Administration except on the limited grounds already noted. Each State is empowered to formulate its own liquor policy keeping in view the interest of its citizens. Determination of wide scale acceptability of a particular brand of liquor, on the basis of national sales figures, does not strike us as being unreasonable, much less irrational. The basis for determination is not only relevant but also fair. No direction can be given or expected from the Court regarding the 'correctness' of an executive policy unless while implementing such policies, there is infringement or violation of any constitutional or statutory provision. In the present case, not only there is no such violation but on other hand, the State in formulating its policy has exercised its statutory powers and applied them uniformly.

24. Though, we are not required to test the correctness of the 'reason' for

increase of MSF over the previous years' figures, but it is relevant to point out that increase of sale from 60,000 cases to 75,000 cases in respect of 'lowest price tag' brand of liquor does not appear to be arbitrary and on the other hand it appears to have a rational basis. Economic mechanism is a highly sensitive and a complex matter. With inflation every year, it goes without saying, that the brand which has the "lowest price tag" this year, was perhaps not the brand which had the "lowest price tag last year". It is possible that the brand 'with lowest price tag' this year may not be of that good quality as the brand with identical price tag last year, even though it may conform to ISI standards. It was, therefore, reasonable for the State to find out whether that particular brand with the lowest price tag this year, had been tested and tried elsewhere and had been accepted largely by the public in other parts of India to determine if that particular brand of liquor can be considered to be liquor of good quality keeping the health and welfare of the public in view. The impugned notification in our opinion furthers the object of providing good liquor having larger acceptability. The policy is made in the interest of health, welfare and morals to benefit all citizens of Delhi and not the big industrial houses as alleged. Determination of wide scale acceptability on the basis of revised national sales figures (MSF) does not strike us as being unreasonable let alone irrational, arbitrary or unfair. Under these circumstances there is no justifiable reason warranting interference with the impugned notification. The Writ Petition accordingly fails and is dismissed but without any order as to costs.