

(1986) 03 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3718 of 1985

Nandlal Jaiswal

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 28-03-1986

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 62(e), 62(f)

Citation : (1986) MPLJ 742

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and Ravindra Shrivastava, for the Appellant; S.L. Saxena, Dy. Advocate Gen. for Respondents 1 to 3, L.P. Bhargava, V.S. Shrotri and P.C. Naik for Respondents 4 and 5, M.M. Sapre for Respondents 6, 7, 10 and 11 and Dr. M.L. Singhvi with K.P. Munshi, V.K. Munshi, Y.K. Munshi and Shrinarayan, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, Actg. C.J.

This Order shall also dispose of M.P. No. 335 of 1986 (Sagar Agarwal vs. State of M.P. and others) and M.P. No. 785 of 1986 (Messrs Doongaji and Co. Ujjain vs. State of M.P. and 9 others).

The challenge made in these petitions, in substance, is to the policy of the State Government contained in the cabinet decision dated 30-12-1984 (Annexure I) for disposal of certain country liquor licences for the period commencing from 1-4-1986. The petitioner's grievance is that by enacting this policy, the State Government has unjustifiably excluded from consideration persons other than respondents 5 to 11 in this petition who are respondents 4 to 10 in Misc. Petition No. 785 of 1986 and one of them is respondent No. 5 in M.P. No. 335 of 1986. In substance, the allegation is that the new policy for grant of country liquor licences covered by it, results in exclusion of the petitioner and others who belong to the same class in addition to creating a monopoly in favour of these

respondents and that too for an unlimited period resulting in hostile discrimination and huge loss of revenue to the public exchequer. This, in short, is the grievance made in these petitions.

In reply, it was contended on behalf of the State and the other respondents that the new policy has been reached after due deliberations of high functionaries taking into account the relevant factors and the only thing done is to prefer the existing contractors for grant of permission to construct the new distilleries with an undertaking to grant licence for manufacture and supply of country liquor to them for a period of 5 years only commencing from 1-4-1986 with a provision for annual renewal within this period of 5 years to ensure compliance of all the terms and conditions of the grant and the statutory provisions. It was contended that it is not a case of exclusion of other persons belonging to the same class, but merely of classifying the existing contractors who constitute a distinct class and the classification has rational nexus with the object sought to be achieved so that it is reasonable.

It was common ground on behalf of all the respondents that according to the impugned new policy, the undertaking of the State Government to these respondents who are the existing contractors, was for grant of licence to manufacture and supply country liquor in these new distilleries only for a period of 5 years commencing from 1-4-1986 and not thereafter even though the existing contractors had been required to construct the new distilleries. It was also contended that these petitions have been filed after considerable delay since this new policy was known to the petitioners much earlier and yet they waited for more than a year to file the earliest of these petitions (M.P. No. 3718 of 1985) on 28-11-1985. On this basis, it was urged that the construction of the new distilleries in accordance with the grant made to the existing contractors under the impugned new policy had almost been completed by now and, therefore, it has two fold implication. This fact was relied for raising the plea of promissory estoppel against the State Government and for urging that the petitioners were disentitled to the relief claimed by them by their conduct emerging from the unexplained delay or laches which gives rise to considerations of equity in favour of these respondents who had spent large amounts of money in construction of the new distilleries.

Substantially for these reasons, the petitions have been opposed on behalf of all the respondents.

The material facts may now be stated on the basis of which the points raised in these petitions have to be decided.

Nine distilleries for manufacture of country liquor are situated in the State of M.P. at Gwalior, Ujjain, Dhar, Badwaha, Chhatisgarh, Seoni, Bhopal, Nowgaon and Ratlam. Out of these distilleries, the one at Nowgaon is privately owned and that at Ratlam, is owned by the State Industrial Corporation, while the remaining 7 distilleries are owned by the State Government. In fact, the buildings and lands

of these 7 distilleries belong to the Government, while the machinery and plant fitted therein belong to the contractor who, for the time being, is granted the licence to manufacture country liquor therein. The licensee is required to pay the price of the machinery and plant for obtaining ownership thereof from the previous licensee whenever the licence changes hands.

According to the prevailing system for manufacture and supply of liquor in the distilleries, the rates of supply for the prescribed period were approved by the Govt. on the basis of tenders. The period of the contract may vary, but the maximum period for such a grant is fixed at 5 years under the statutory provisions. The licences to the existing contractors who are respondents in these petitions, were granted for 5 years in 1981 and the period of their licences would end on 31-3-1986. For the supply of liquor, separate areas are attached to each of these distilleries and it is only Jabalpur and Betul Districts which are not attached with any particular distillery. For these two districts, the arrangement is for supply of liquor through supply contractors. Sagar Agarwal, petitioner in M.P. No. 335 of 1986, is holder of the supply licence for Jabalpur and Betul areas in form D-1(5).

According to the practice existing so far, when the period of the existing contract is to end, tenders for supply rates are called for the next period from intending bidders and on that basis, supply rates are approved for the next period for which licence is to be granted. If the existing contractor gets licence for the next period as well, no question of transfer of ownership of the distillery and plant arises, but if the licence of the distillery is given to another person, then according to the existing provisions, the new licensee is required to purchase the same from the previous licensee. Provision has been made for determination of the value of the property by a committee which fixes the price to be paid by the new licensee in such a situation. The effect of the new policy in substance is to pre-determine the grant for the next 5 years commencing from 1-4-1986 by selecting the existing contractors who are the respondents, instead of inviting tenders from intending bidders who may be persons in addition to these respondents.

The circumstances in which the new policy came to be made, may now be mentioned. In July 1983, these respondents who are the existing contractors calling themselves as "M.P. Distillers' Association", approached the Government with a demand for giving ownership of the Government distilleries to the present contractors. It was urged that the ownership of the distilleries in almost all other states is in private hands and even in this State, only the buildings and lands belong to the Govt. whereas the machinery fitted in the distilleries is the property of the existing contractors which changes hands whenever there is a change in the contractors, the condition of the distillery buildings is quite bad and the contractors also do not care to maintain them properly because their interest is for a limited period, there was increasing problem of disposal of toxic effluents from the distilleries and their location also was inappropriate as a result

of the growth of the cities and increase of population therein.

The matter for enquiry was entrusted to the Separate Revenue Department after obtaining the opinion of the Excise Commissioner who was of the view that it would be more appropriate to have distilleries owned by private individuals instead of the State Govt. The Separate Revenue Department was of the opinion that this change should be effected after the expiry of the present contract period ending on 31-3-1986, but steps should be taken for construction of new distilleries on new sites with new machinery prior to 31-3-1986 to enable the new-distilleries to function from 1-4-1986 on commencement of the period of the next licence.

The matter was then entrusted to a cabinet sub-committee comprising of the Ministers of the Separate Revenue Department, Major and Minor Irrigation Department, Department of Commerce and Industries and Department of Rehabilitation and Environment. This sub-committee of 4 ministers was assisted by the Chief Secretary and Secretaries of these Departments in addition to the Excise Commissioner. The recommendations of the sub-committee made, in its meeting on 28-9-84, the comments of the Finance Department thereon and thereafter the summary dated 6-12-84 prepared by the Separate Revenue Department containing the counter comments thereto were placed before the cabinet for its decision on 30-12-84. The cabinet took the decision to accept the recommendations of the cabinet subcommittee. All these documents have been placed on record and form part of the record of these petitions.

The gist of the recommendations made by the cabinet sub-committee, the comments of the Finance Department and counter comments thereto which led to the cabinet decision, may now be summarised. The material recommendations of the cabinet sub-committee were substantially the following:

- (i) All the Govt. distilleries should be transferred to the existing contractors who had been granted the licence for a period of 5 years ending on 31-3-86.
- (ii) The Govt. should enter into an agreement with the existing contractors that they shall be granted licences in Form D-2 after the new distilleries had been constructed by them according to the specified terms and conditions.
- (iii) Initially, the D-2 licences should be granted for 5 years and after that, provision should be made for their renewal and wherever necessary, amendments may be made in the Excise Act and Rules.
- (iv) The method adopted in West Bengal for fixation of prices was recommended to be adopted.
- (v) The prices to be effective from 1-4-86 were to be fixed by a subcommittee.
- (vi) The existing system of supply area attached to each distillery should be maintained in future, but the State Govt. (Excise Department) should have the power to increase or decrease the supply area of any distillery. Other

recommendation" including those of details are not material for deciding the points raised in this petition.

The substance of the Finance Department's comments and the counter comments thereon is now stated. The comments of the Finance Department mentioned that it would not be proper to transfer the ownership of lands and buildings of the distilleries to the existing contractors and to assure the existing contractors that permanently no tenders would be invited and the State shall purchase all the liquor from them. It was pointed out that looking to the increase in the annual consumption of liquor, the new scheme would result in creating a monopoly in the existing contractors and, therefore, the Govt. should retain with it the right to grant D-2 licence to any other person; and it would be more desirable to have a competition through tenders for the rates for supply of liquor instead of its fixation by a committee for the existing contractors alone. For these reasons, the Finance Department suggested reconsideration of the recommendations relating to fixation of price, transfer of present lands and buildings and creation of monopoly for supply of liquor. Thereafter a precis was made containing also the counter comments which was the basis of the cabinet decision accepting the recommendations of the sub-committee. In the counter comments transfer of lands and buildings to the existing contractors was justified and it was stated that the new policy would not result in creation of monopoly since there was no recommendation that no other person should be granted D-2 licence. It was also stated that some arrangement should be made in the agreement so that the distilleries could be taken over by the State Govt. in case the same had not to be run by the existing contractors who construct the new distilleries. Regarding fixation of price, it was stated that after transfer of the distilleries to private ownership, the prices should be fixed every year.

On the basis of the precis containing the recommendations of the subcommittee, the comments of the Finance Department and the counter comments thereon, the cabinet took the decision on 30-12-1984 to accept the recommendations of the cabinet sub-committee. This decision is contained in the document (Annexure, I) dated 30-12-1984 which says nothing more.

In accordance with the above decision, all the Govt. distilleries were to be transferred to the existing contractors who had been granted licences for the period ending on 31-3-86 and letters of intent were to be issued for grant of D-2 licences for construction of distilleries under the M.P. Excise Act to manufacture spirit with effect from 1-4-86 therein. In pursuance of the decision of the State Govt., a letter of intent was issued to the existing contractors on 1-2-85 for construction of distilleries to manufacture spirit with effect from 1-4-86 in lieu of the existing distilleries subject to the conditions mentioned therein. The conditions mentioned that licence would be granted for a period of 5 years commencing from 1-4-86 and that the licensee shall be bound to complete the construction of the distilleries well before 1-4-86 according to the specified conditions and that D-2 licence would be granted to him. An agreement dated

2-2-85 was also entered into to this effect mentioning that the Govt. shall be bound to grant D-2 licence in favour of the licensee who had been granted letter of intent to manufacture spirit with effect from 1-4-86 for a period of 5 years. Other conditions of the grant were also mentioned. An identical letter of intent was issued to every such existing contractor and so also was the agreement entered into with him. The existing contractors then proceeded to construct new distilleries and it was stated at the hearing that the same were almost complete and that large amounts of money had already been spent in making the construction.

It may be mentioned at this stage that the controversy between the parties was reduced to some extent at the hearing of the petitions as a result of modification in the stand of the respondents to meet certain obvious defects in the new policy adopted by the State Govt., in its cabinet meeting held on 30-12-84. The vices in the new policy pointed out by the petitioners were creation of a monopoly in favour of the existing contractors for all times by making the initial grant for a period of 5 years and providing for almost automatic renewal of the grant in their favour and total exclusion of any other person from entering the field by grant of this privilege to manufacture and supply country liquor only to the existing contractors in the entire area of the State of M.P. The modified stand of the respondents mentioned hereafter was an attempt to avoid this criticism.

The recommendation of the cabinet sub-committee clearly was that in the beginning, D-2 licence should be granted for 5 years and thereafter there should be renewal for which the necessary amendment in the Excise Act and Rules should be made. The recommendation for amendment in the Act and the Rules was made obviously on account of the fact that according to the existing provisions, particularly rule 11(2) of the Rules of General Application framed u/s 62 (e), (f) and (h) of the M.P. Excise Act, wholesale licence for manufacture, supply and sale of liquor, cannot be granted for any period exceeding 5 years and so the provision of automatic renewal thereafter would violate that rule. All recommendations of the cabinet sub-committee were accepted without any qualification by the cabinet in its decision made on 30-12-84 and, therefore, this recommendation was also duly accepted.

It appears that the respondents rightly appreciated during the hearing that their initial stand was untenable and, therefore, it was expressly stated at the hearing before us by the learned Advocate General on behalf of the State, Dr. L.M. Singhvi, Shri L.P. Bhargava and Shri Sapre, learned counsel for the remaining respondents, that the undertaking given by the State Govt. to these respondents who are the existing contractors, is for grant of licence for a maximum period of 5 years subject to its annual renewal within the period of 5 years on the terms and conditions mentioned and that there was no undertaking to grant by way of renewal or otherwise after the expiry of the period of 5 years commencing from 1-4-86. Similarly, it was expressly stated by the learned Advocate General, Dr.

Singhvi and other counsel appearing on behalf of the respondents that the State Govt. was not bound to maintain the area attached to each distillery which could be modified by reduction during the currency of the licence given to these respondents in order to provide an area for operation by any other person to whom an additional licence is granted. It was also expressly conceded on behalf of the respondents that additional licences in Forms D-1 and D-2 could be given to persons other than these respondents during the same period and areas could be attached to them. The vice of monopoly which was commented upon even by the Finance Department and was raised in the petition, was attempted to be overcome by the respondents by making these concessions expressly at the hearing of these petitions. Thus, on the basis of the modified stand of the respondents, it has to be seen whether the remaining application of the new policy renders it invalid in any manner.

Considerable arguments were advanced from both sides and various facets of Art. 14 of the Constitution in its application to the grant of State exclusive privilege in the liquor trade were pointed out to us with reference to numerous decisions of the Supreme Court for supporting the rival contentions. In substance, the argument of Shri Venugopal, learned counsel for the petitioners was that even after this concession was made at the hearing of the petition, the vice of hostile discrimination violating Art. 14 remains as a result of exclusion of all persons other than the existing contractors from consideration for grant of this privilege on the decision made by the State Govt. to make such a grant. He argued that such total exclusion of persons other than the existing contractors violates Art. 14 since the decision is not only discriminatory, but also arbitrary resulting in loss to the public exchequer by eliminating competition between the intending purchasers of the privilege to manufacture and make wholesale supply of country liquor.

In reply, learned Advocate General and Dr. Singhvi contended that there is no loss to the public exchequer and there is no hostile discrimination inasmuch as the existing contractors constitute a distinct class on the basis of which their separate classification is reasonable on account of the fact that their machinery and plant installed in the existing distilleries are to be scrapped resulting in considerable loss to them. It was argued that for this reason, their classification for the purpose of making a preference in their favour to grant the privilege for the first 5 years is justified as a reasonable classification. The arguments on behalf of the respondents were based mainly on the Supreme Court decision in *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, . It was contended that the subsequent decisions of the Supreme Court relating to applicability of Art. 14 in respect of excise trade had re-inforced the view taken in *Harinarayan*'s case (*supra*) instead of modifying it in any manner. The argument was that excise trade, on account of its peculiarity, gives the State much larger scope in the matter of classification permitting even exclusion of persons so that there is a much larger play at the joints available to the State. It was urged that even though Art. 14 of the Constitution applies at the should in the matter of

grant of State's exclusive privilege in the trade of liquor when it is decided to part with it for a consideration, yet the scope in exercise of discretion, while making the choice of the grantee of the privilege, is very large. Dr. Singhvi also referred to several provisions of the M.P. Excise Act and the Rules framed thereunder, particularly section 14(c) of the Act to contend that it confers an independent power on the State in addition to the power given by Rule XXII of the Rules framed u/s 62(2)(h) of the Act relating to the disposal of licences which empowers the State to give licence on a fixed licence fee or in such other manner as the State Govt. may, by general or special order, direct. Accordingly it was contended that instead of adopting the mode of disposal of licence by tender or auction, the State had the power to give it for a fixed licence fee to any particular person or in any other manner which the State Govt. found suitable. For this reason, it was contended, the decision of the State Govt. to make this grant only to the existing contractors, was permissible not only under the Independent power of the State given by section 14(c) of the Act, but also under Rule XXII and it did not violate Art. 14 which gave a very large discretion to the State in disposing of the licences for manufacture and supply of liquor.

Dr. Singhvi also contended that the doctrine of promissory estoppel was attracted in the present case to bind the State Govt. to its promise and since it could be used not only as a shield, but also as a sword to enforce a right, it was also available to the existing contractors in this manner. It was contended that the petitioners having come to a Court after considerable delay, their conduct disentitled them to grant of any relief even assuming that the scheme was invalid. Dr. Singhvi also contended that the new policy adopted by the State was an institutional decision reached after deliberations involving high functionaries over a period of 1 1/2 years commencing in July 1983 and ending on 30-12-84 which excluded the possibility of any arbitrariness and ensured a full and proper consideration of all the relevant factors.

Both sides made copious reference to the contents of the impugned new policy. On behalf of the petitioners, this was done in an attempt to show that it benefits the grantee, while on behalf of the respondents, it was done for the purpose of showing that the provisions were reasonable and they did not, in any manner, adversely affect the public exchequer. We consider it unnecessary to either detail the submissions made from either side or to consider them since that is unnecessary for the purpose of this petition wherein the real point for our decision is whether there has been any violation of Art. 14 at the threshold so as to require our interference with the implementation of the new policy.

We shall now come to this narrow question which alone we are required to decide. The grant made by the impugned new policy may be divided for the sake of convenience into two parts: The first part relates to the grant for construction of the new distilleries by the existing contractors. The other part relates to the grant of licence for manufacture and wholesale supply of liquor with effect from 1-4-86 to the existing contractors on construction of new distilleries by them.

According to the petitioners, there is breach of Art. 14 at both these stages. We propose to consider the argument of promissory estoppel in its different facets advanced by Dr. Singhvi on behalf of the respondents separately while dealing with these two parts.

The first part relating to grant for the construction of new distilleries to the existing contractors is taken up now. In our opinion, the stage at which the petition was filed and the point to be decided by us indicates that no interference in this petition is called for with the grant to this extent. The documents on record in these petitions indicate that Sagar Agarwal, petitioner in M.P. No. 335/86, was aware of the proposed new policy even when the matter was under consideration and prior to the cabinet decision taken on 30-12-1984. Even assuming that the petitioners Sagar Agarwal and Nandlal Jaiswal are, in no way connected with each other as claimed by them, it is reasonable to assume that the proposal for such a policy must have been known to persons in the liquor trade during the period of 1 1/2 years of its formulation and at any rate, soon after it came into existence as a result of the cabinet decision on 30-12-1984. The letter of intent was issued to each of the existing contractors on 1-2-85 and the agreement was executed for this purpose on 2-2-85. The construction work of the new distilleries was obviously commenced thereafter much before M.P. No. 3718/85 was filed on 28-11-85 and M.P. No. 335/86 on 24-1-86. Grievance was made by only these two persons and that too almost a year or more after the new policy had become known and construction of the new distilleries had been commenced requiring investment of large amounts. The only other person who has made a grievance against the new policy is Messrs Doongaji & Co. petitioner in M.P. No. 786/86 which was filed only on 26-2-86 after commencement of the hearing of these petitions. On behalf of the respondents, it has been urged that construction of the new distilleries is almost complete, if not wholly complete in all respects.

In our opinion, the delay in bringing these petitions to challenge the grant made to the existing contractors who are respondents in these petitions for construction of the new distilleries, is not adequately explained and, therefore, it would not be appropriate to interfere with the grant to this extent since at this stage, particularly when the constructions by the respondents are nearly complete. We have, therefore, reached the conclusion that without expressing any opinion about the validity of the scheme relating to the grant only to the existing contractors for construction of the new distilleries, no interference with the grant to this extent alone should be made in these petitions on the short ground that there is unexplained delay in challenging the grant to this extent in these petitions and during the intervening period, the new distilleries have almost been completed, if not wholly completed and any interference with the grant to this extent will result in needless complications. For this reason alone, we decline to examine the validity of grant made in favour of the respondents only to the extent it permits them to construct the new distilleries. In our opinion, the facet of promissory estoppel relied on against the petitioners on the

basis of their conduct is applicable only to this extent.

The question now is whether any case is made out for interference with the new policy of the State Govt. in so far as it relates to the grant of licences for manufacture and wholesale supply of country liquor which has yet to be made in Forms D-1 and D-2. In our opinion, in this respect, the new policy which is to be effective from 1-4-86, contravenes Art. 14 of the Constitution and interference to that extent is called for. It is not necessary to deal at length with the several decisions of the Supreme Court cited at the Bar. It is sufficient to say that the same decisions are relied on by both sides to support the rival contentions and Hamarayan's case (supra) is the mainstay of Dr. Singhvi's arguments to contend that while making the grant of exclusive privilege of the State in the liquor trade, there is ample discretion given to the State by Art. 14 itself to exclude any category of persons and to prefer only a particular category of persons. Section 14(c) of the M.P. Excise Act and Rule XXII of the Rules of General Application have also been relied on for the same purpose to contend that grant of this privilege by the State is not confined merely to the modes of inviting tenders and auction, but also extends to the grant being made for a fixed licence fee to a particular person or by any other manner which the State Govt. considers appropriate. On behalf of the respondents, it was contended that this enabled the State Govt. to prefer the existing contractors not only for grant to construct the new distilleries, but also thereafter to manufacture country liquor therein and to make its wholesale supply under the licences granted in Forms D-1 and D-2. This classification was claimed to be reasonable in accordance with Art. 14 of the Constitution on the ground that the existing contractors as owners of the machinery and plant in the old distilleries which are to be scrapped on the expiry of their licence on 31-3-86, constitute a distinct class for preference being made in their favour for the first 5 years with effect from 14-86.

Art. 14 applies at the threshold while making the grant after the State decides to part with its exclusive privilege even in the liquor trade, is the sum and substance of the Supreme Court's decisions relied on from both sides. Harnarayan's case (supra) which is strongly relied on by Dr. Singhvi, is no exception and the observations therein have to be read in this manner so as to reconcile it with the upto date decisions of the Supreme Court on this point. It was rightly for this reason that ultimately no attempt was made at the hearing on behalf of the respondents to contend that Art. 14 of the Constitution has no application to the grant made by the State to part with its exclusive right of trade in liquor and the respondents' case was confined merely to compliance of Art. 14 by absence of arbitrariness and reasonable classification on the ground that the existing contractors constitute a separate and distinct class. It is, therefore, only this narrow question which ultimately survives for our decision with regard to the other part of the new policy.

The foundation of the respondents' contention for reasonable classification in accordance with Art. 14 of the Constitution is that the existing contractors

constitute a distinct class on account of their machinery and plants being scrapped under the new policy requiring construction of new distilleries with new plants and machinery at a new site. We are unable to accept the contention that the existing contractors who are respondents in these petitions, constitute a distinct class for this purpose or that this classification is reasonable to permit exclusion from consideration of all other intending purchasers of the State's exclusive privilege to manufacture and make wholesale supply of country liquor at the threshold for grant of licences in forms D-1 and D-2. Even assuming that the new policy may not result in loss to the public exchequer as claimed by the respondents which question is hypothetical on the existing facts, we are of the opinion that to this extent, the impugned new policy contravenes Art. 14 of the Constitution as it excludes from consideration all other intending purchasers of the State's privilege which it has decided to grant. The assumption on the basis of which the argument for reasonable classification is based, suffers from a fallacy which we shall presently indicate.

According to the modified stand of the respondents themselves which has been indicated earlier, the grant made for manufacture and wholesale supply of country liquor to the existing contractors under the impugned new policy, is only for a period of 5 years commencing from 1-4-86 and for the period thereafter, other persons being eligible for the grant of these licences, is clearly conceded by this argument. It is nobody's case that the new distilleries are for a period of 5 years only from 1-4-86 and the new licensee, for the period thereafter, will be required to manufacture and supply country liquor from any other distilleries. It is, therefore, obvious that some arrangement is contemplated for enabling the new licensees to manufacture and supply liquor from these new distilleries after the initial period of 5 years in case persons other than the existing contractors who have constructed the new distilleries, are granted these licences. No attempt was rightly made by the respondents to claim grant for a period subsequent to the initial five years on the ground that the existing contractors were the persons who had constructed these new distilleries. Obviously for the same reason, construction of the new distilleries by them cannot be a ground to classify them differently for this purpose even for the initial period commencing from 1-4-86. If the new policy contemplates a new licensee other than the existing contractors for a period after the initial 5 years and no difficulty in changeover is visualised, then there is no reason to treat this facet as an unsurmountable difficulty or a sufficient reason to classify the existing contractors as a distinct class and to confine the grant for the first five years from 1-4-86 to the existing contractors alone to the total exclusion of all others. Another licensee can come in now as he can, after the first 5 years for manufacture and wholesale supply of country liquor from the new distilleries constructed by the respondents.

In this connection, reference may also be made to the terms and conditions of the tender notice dated 16-4-81 (Annexure "A") for a period of 5 years from 1981 to 31-3-86 and the existing statutory provisions, particularly condition No. 37 in the licence in Form D-1. These terms and conditions provide for payment

by the licensee of the value of the distillery and warehouse plant to the State Govt. or the private owner as the case may be and for deposit of the specified probable value of distillery and the warehouse plant as a condition for grant of the licence. This was the practice even earlier and provision was made for realisation of the value of distillery and the warehouse plant from the new licensee whenever a new licensee stepped in. This situation is, therefore, not new and it can be taken care of by imposing suitable terms and conditions subject to which the new grant is to be made to a person other than the owner of the distillery and the plant. Merely because the new distilleries have been constructed by the existing contractors and machinery and plants installed mere in by them, there can be no reason to grant the licence for manufacture and supply of liquor to them alone and none other even where other persons are prepared to make better offers to augment the public revenue. It is a different matter that in cases where the offer by the person constructing the new distillery and the best offer made by any other person is equal, preference may be given to the owner of the distillery and plant because such preference would not deprive the State of larger revenue and it would be a case of merely preferring the owner of the distillery, other things being equal instead of excluding all others from competition at the threshold for entering into contract with the State.

In our opinion, the argument of promissory estoppel strongly relied on by Dr. Singhvi on behalf of the respondents cannot result in refusing interference by us even to this extent. In view of the bifurcation made in the grant according to the new policy in the manner indicated by us by separating the grant for construction of the new distilleries from the subsequent grant for manufacture and supply of liquor, the question of promissory estoppel poses no difficulty for the later part. The grant of licences for manufacture and supply of liquor are yet to be made with effect from 1-4-86 and the petitions filed in November 1985 and January 1986 cannot be said to be unduly delayed for this purpose. So far as the State Govt. is concerned, it may be willing to abide by the undertaking it has given to grant these licences for manufacture and supply of country liquor to the respondents who have constructed the new distilleries, but the question is whether the State Govt. should be held bound by this undertaking when we have reached the conclusion that it violates Art. 14 of the Constitution.

Dr. Singhvi relied on the decision reported in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, wherein the earlier decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, has been approved and it has also been held that the doctrine of promissory estoppel is available not merely as a shield, but also as a sword. In our opinion, it would be inappropriate to hold that the doctrine of promissory estoppel obliges the Govt. to fulfil an undertaking even if it is held to be violative of Art. 14 of the Constitution and, therefore, invalid. The principle must be held to apply to an undertaking which is not invalid, illegal or unconstitutional. To accept this argument of promissory estoppel after coming to the conclusion that this further undertaking of the State Govt. to grant the licence for manufacture and supply of

liquor to the" existing contractors on construction of the new distilleries by them, violates Art. 14 of the Constitution would amount to compelling the Govt. to perform an obligation which is unconstitutional. This would be contrary to the decisions relied on by Dr. Singhvi himself in which it is clearly pointed out that the doctrine of promissory estoppel cannot be invoked to compel the Govt. or even a private party to do an act prohibited by law. This, in our opinion, is the short answer to the argument of promissory estoppel strongly relied on by Dr. Singhvi on behalf of the respondents to contend that the Govt. must be held bound by its undertaking to grant licences for manufacture and supply of country liquor to the existing contractors who have constructed the new distilleries and for this reason, no interference should be made in these writ petitions even if any contravention of Art. 14 of the Constitution to this extent is found proved.

We have, therefore, reached the conclusion that the impugned new policy of the State Govt. contained in the cabinet decision made on 30-12-84 to be applied from 1-4-86 is invalid to this extent as it contravenes Art. 14 of the Constitution of India.

Consequently the petitions are partly allowed as follows:

- (i) No interference is made with the impugned new policy of the State Govt. in so far as it makes the grant in favour of the existing contractors for construction of the specified new distilleries and installation of plants and machinery therein which are to be used for manufacture and supply of country liquor from 1-4-86 in lieu of the old distilleries.
- (ii) The said Govt. policy and its undertaking given to the existing contractors who are respondents 5 to 11 in M.P. No. 3718/85 and are also respondents in other petitions for grant of licences to manufacture and make wholesale supply of country liquor with effect from 1-4-86, is declared to be invalid as it contravenes Art. 14 of the Constitution by excluding all others from consideration for grant at the threshold for entering into the contract with the State Government.
- (iii) The State Govt. is, therefore, directed to make the grant for manufacture and supply of country liquor from these new distilleries with effect from 1-4-1986 by adopting any of the permissible modes available to it whereby every intending purchaser of this privilege who is qualified for the purpose gets equal opportunity for entering into such a contract with the State Govt.
- (iv) To provide for the possibility of any person other than the owner of the new distilleries and plants being the successful purchaser of the privilege to manufacture and supply liquor, the State Govt. would be free to impose suitable terms and conditions subject to which the grant would be made which would enable the proper value of the new distilleries and their plants as assessed by the State Govt. being given to the owners of the new distilleries and plants as was done to provide for similar situations till now or is contemplated for such a situation under the new policy after the expiry of the initial period of 5 years

from 1-4-86.

(v) In view of the partial success of the two sides and the circumstances of the case, we direct the parties to bear their own costs. Security amount deposited by the petitioner be refunded.

B.M. Lal, J.

I have had the advantage of reading the judgment prepared by Hon"ble the Chief Justice. Although, I agree with the ultimate conclusion reached by him, yet I, however would like to express my views separately for the reason that at the very outset Shri Venugopal learned counsel for the petitioner argued and pointed out that in the garb of implementation of Water Pollution Prevention Scheme, the State Government by ignoring the statutory rule XXII framed u/s 62(2)(h) of the Madhya Pradesh Excise Act, 1915 (hereinafter referred to as the Rules) entered into an agreement with the respondents No. 5 to 11 by which, if the agreement is implemented, the public exchequer will suffer a loss to the tune of Rs. 56 crores only in the first five years tenure of the private treaty agreement. This has persuaded my judicial conscience to express my views separately; though, in result, I am concurring with the conclusions reached by the Hon"ble Chief Justice.

The point in issue relates to "Liquor- vs -Liquor" in this petition. Relevantly, I am reminded of the words of a great philosopher who said "My way of joking is to tell the truth. It's the funniest joke in the world" and further said "Liquor on culmination utters the truth. Also according to the arguments the truth of corruption is peeping out from the record.

In the light of these adages, if the rival contentions advanced on behalf of the petitioner by Shri Venugopal, Shri Y.S. Dharmadhikari and Shri Ravindra Shrivastava; on behalf of the respondents by Shri Anand Mohan Mathur, Advocate General, Dr. Singhvi, Shri Munshi, Shri Sapre and others are examined, I reach the conclusion that the State of Madhya Pradesh (hereinafter referred to as the State) going out of the way by ignoring the statutory rules have favoured the respondents Nos. 5 to 11 by granting them 30 years perpetual lease by entering into an agreement dated 2-2-1985 to issue licence in form D-2 for construction of distillery on the land approved by the Government and to manufacture spirit w.e.f. 1-4-1986 and in consequence thereof further agreed to grant licence in form D-1 for the wholesale supply of country spirit w.e.f. 1-4-1986 to 31-3-1991, i.e. for five years and thereafter renewing the same for the next five years after getting a deposit of Rs. 5000/- only from each respondent which would continue till 31-3-2016.

In this respect the learned counsel Shri Venugopal and Shri Dharmadhikari argued that by this monopoly created in the hands of respondents Nos. 5 to 11 for a period of 30 years, the State exchequer will sustain a loss of Rs. 56 crores only within the first tenure of five years.

The facts leading to this illegal, non-statutory agreement dated 2-2-1985 has

been discussed in detail by the Hon'ble Chief Justice and, therefore, it is not necessary to repeat them again except those which got some relevancy to the case, and I would like to discuss the point in issue directly.

It is a common ground that the licence in form D-2 is a must for the construction and working of a distillery which includes the construction of building and necessary plant for distilling the spirit. Section 13(f) provides that no person can use or have in his possession any material, distil utensils or apparatus whatsoever for the purpose of manufacturing of any intoxicant (liquor/spirit) other than toddy, except under the authority and subject to the terms & conditions of a licence granted in that behalf. D-2 licences are issued for the construction of distillery building and for working of distillery which means that a holder of licence shall distil spirit. In this way, no person can. process or transport or sell liquor without a valid licence.

A licence in form D-1 is issued for wholesale supply of country spirit to D-1(s) licensees. In case the licensee in form D-1 is also a licensee in form D-2, the licensee can distil the spirit and make wholesale supply. The licencees in form D-1 and D-2 are required to do the job of bottling, corking and labelling for which they are paid at the rate as agreed upon between them and the State. In the past licenses in form D-1 and D-2 were with the respondents No. 5 to 11 who used to distil spirit and make wholesale-supply of country spirit to D-1(s) licencees. This license in form D-1(s) is a license for a person who does not have a distillery of his own, but purchases spirit from a holder of a license in forms D-1 and D-2, and thereafter supplies spirit/liquor to warehouses for vending to retail dealers.

For the last five years, commencing from 1-4-1981 to 31-3-1986 tenders were invited in accordance with rule XXII of the rules and the tenderers whose rates of Mahua based spirit, molasses based spirit and khansari molasses based spirit were found lowest among others, were granted D-2 and D-1 licenses.

But, in the new scheme adopted by the State Government, ignoring the statutory rule XXII of the rules while granting licence in form D-1 or D-2 the rate of wholesale supply of country liquor is not to be fixed after inviting tenders giving equal opportunities to all the distillers in and outside the State, but the rates are to be fixed by negotiations. This new mischievous device gives scope to respondents No. 5 to 11 to monopolize the entire trade of liquor distillery in Madhya Pradesh and also makes the State dance at their tips while fixing the rates according to their wishes.

Therefore, in short, the whole controversy centres round the cabinet decision of the State Govt. dated 30-12-1984 which is filed as Annexure-A in this petition in consequence whereof agreement dated 2-2-1985 was arrived at between the State of M.P. and the respondent No. 5 to 11 according to which licence in form D-2 has been granted and it is agreed to grant licence in form D-1. Notwithstanding valiant opposition raised by the State Finance Secretary in the

interest of revenue, this private treaty/agreement dated 2-2-1985 in consequence of the cabinet decision dated 30-12-1984 without making it known to any distillers of the State or outside the State, was arrived at between the State and the respondents No. 5 to 11 in utter violation of statutory rules sitting within the four corners of Vallabh Bhavan. Rule XXII framed u/s 62(2)(h) of the Excise Act, 1915 reads as under:-

XXII. Disposal of licences-(1) Licence for the manufacture or sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Government may, by general or special order, direct,

Except where otherwise prescribed, licence shall be granted by the Collector or by an officer authorised by him in that behalf.

(2) **** *

A plain reading of this rule spells out that there are four clauses which are interrelated and failing in one of the clauses the next is to be acted upon and for applying the fourth clause, it is incumbent for the State to specify the manner by general or special order this also includes to specify that is, how and why the other three clauses are not possible to be acted upon which compels to take resort of the fourth clause, so as to ensure the maintainability of "doctrine of equality" among the distillers ensuring them that likes are treated alike in administering equality before law.

However, this position is not disputed that while arriving at the said agreement dated 2-2-1985, the State has not assigned any reason by general or special order while bypassing the other three clauses of rule XXII of the rules, so as to lay down the test of article 14 of the Constitution.

This rule XXII of the rules has got a sanctity and force of statute within the meaning of article 13(3)(a) of the Constitution of India and hence it has force of law. It derives sanction from the legislative powers vested with the legislator and, therefore for all purposes it has got a force of law and it binds the State which cannot bypass or modify it according to their choice or sweet will. Thus the power of the State is completely ousted to follow any ad hoc procedure in contravention of rule XXII of the rules. See *The State of Assam Vs. Keeshab Prasad Singh and Another*, .

Therefore, non-compliance of rule XXII makes the agreement dated 2-2-1985 invalid being against law and hence it deserves to be quashed directing the State Government to follow the procedure as laid down in rule XXII (Supra) alone for granting licences to the distillers.

In this regard, it may be stated, that the powers given under rule XXII (supra) are to be exercised according to the manner prescribed therein and the private treaty/agreements are completely forbidden being against the provisions of section 23 of the Contract Act as well. In *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, , Their Lordships of the

Supreme Court have held that:-

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.

It is therefore, crystal clear that by passing the statutory provision of rule XXII (Supra) by executive action of the State Government, no licence etc. either in form D-1 or D-2 could be granted.

For this reason therefore, the learned counsel for the petitioners mainly stressed his arguments on the point that the non-compliance of rule XXII (supra) entails declaration of agreement dated 2-2-1985 invalid and consequently no licence in form D-2 or D-1 could be issued in favour of respondents No. 5 to 11 being violative of Article 14 of the Constitution of India besides other grounds.

In this context, Shri Venugopal and Shri Dharmadhikari submitted that this non-statutory contract, as reached between the parties not only speaks of arbitrariness and mala fide, but also gives foul odour of corruption. They further argued that it is also against the M.P. Finance Code. Referring para 35 of the petition No. 335 of 1986 Shri Venugopal categorically pointed out the specific averments that the State will sustain loss in crores which he has worked out vide Annexure-K at page 139 of the Paper Book and thus further submitted that if this contract is given effect to, the public exchequer will suffer loss annually in crores, only for the sake of extending undue favour to respondents No. 5 to 11. This statement has not been categorically in so many words refuted by the State Government in their return which appears to be rightly so, as the State has no reasonable and convincing reply to it.

However, it appears that the sinister or underhand dealing of the agreement has persuaded the State Government to make the statement before this Court during the course of second day of arguments, that they have reduced the period of the agreement dated 2-2-1985 from 30 years to a mere of 5 years period i.e. w.e.f. 1-4-1986 to 31-3-1991 with no condition of renewing it thereafter without adhering to the provisions of rule XXII (supra). By making this statement at the bar, I presume that, the State is trying to minimise the extent of depletion of public revenue, but still the loss of 56 crores, as argued by Shri Venugopal, continues if licence in D-1 form is granted to the respondents No. 5 to 11 even for a period of five years.

Making any relaxation in contracts illegally arrived at by violating statutory provisions of rule XXII (Supra) which gives obnoxious smell of mala fide involving public revenue in crores, then, in my opinion, even for a moment it cannot be allowed to stand in the eye of law.

It appears that by reducing the period of 30 years to a mere five years period,

the State still wants to extend benefit to respondents No. 5 to 11, so that the amount so far spent by them in working out the contract in approaching the concerning authorities of the State may be compensated. Why this undue favour is being tried to be extended to the respondent No. 5 to 11, speaks in itself in volumes and is really a matter of investigation which only lies within the domain of the State Government.

Be that as it may, in law even granting five years licence to the distillers despite its being against the statutory rule XXII of the rules (supra) which also attracts violation of "doctrine of equality", therefore, to me it appears that the Government being the custodian of its people including public property, in all fairness ought to have made the statement that licence in form D-1 would be issued after taking recourse to the statutory provisions of rule XXII (supra) which envisages inviting tenders etc.

Notwithstanding the relaxation made on behalf of the State in the tenure of contract from 30 years to 5 years, Shri A.M. Mathur, Advocate General and Dr. Singhvi both argued that the petitioners have no fundamental right to trade in liquor invoking the provisions of Article 19(1)(g) of the Constitution of India and therefore, they submitted that the petitioners have no locus standi being third persons to vindicate their rights in these petitions in view of the settled position that the State is having full monopoly in trading in liquor.

Dr. Singhvi further raised another ground of attack and argued that the State is estopped by the "doctrine of promissory estoppel" to bring any modification in agreement dated 2-2-1985 from thirty years to five years unilaterally.

Dealing with the point in issue, whether the citizens have fundamental right under Article 19(1)(g) of the Constitution to do trade or business in liquor, there are catena of decisions and in a recent pronouncement of the Supreme Court, it has been held that there is no fundamental right to the (sic) to trade in intoxicant. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , by reviewing the earlier authorities, i.e. *The State of Bombay and another vs. F.N. Balsara* AIR 1951 SC 318 , *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, and *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , reached the conclusion that the citizens have no fundamental right to do trade or business of intoxicants. However, under the statutory provisions, the respective States while regulating the control over intoxicant, have the right to prohibit absolutely in indulging in intoxicant business relation to its manufacture, storage, export, import, sale and the possession and as such the entire rights relating to intoxicant are vested in State. In *Nashirwar etc. vs. State of Madhya Pradesh and others* AIR 1973 S.C. 366 the State's right to auction licence for vending the liquor has been discussed and it has been held that the State has monopoly right to trade in liquor business. Similarly, in *Lakhanlal and Others Vs. The State of Orissa and Others*, and *Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others*, , it has been held that the

citizens have no right to trade or carry business in intoxicants. These restrictions have been impugned in view of the provisions of Article 47 of the Constitution, relating to Directive Principles of State Policy, which enumerates that the State shall endeavour to bring absolute prohibition of the consumption, except of medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

On this basis Shri A.M. Mathur and Dr. Singhvi further advanced their respective argument that the State having full monopoly in trade of liquor, the petitioners cannot claim that grant of licences in form D-1 and D-2 in favour of the respondents 5 to 11 violates any rights of the petitioners.

The question posed by Shri Mathur and Dr. Singhvi itself gives the reply as the petitioners and the respondents Nos. 5 to 11 are similarly circumscribed belonging to the same class of business of distilling country liquor. Therefore, in such state of facts where persons standing on the same footing the doctrine of equality comes into play. That is, equality before the law means among equals the law should be equal, and should be equally administered and that likes should be treated alike. The shortest and simplest principle enunciated under Article 14 of the Constitution is that equality before the law pre-supposes that those who are so treated by the Law are actually equals. It is the equality of status which comes before the equality of opportunity according to the Preamble of our Constitution. Therefore, notwithstanding the fact that the State has a right to enter into a contract with anybody of its choice but the State has no right to discriminate between the parties as is being done in the instant case in accepting the offers of the persons of their choice i.e. respondents No. 5 to 11 excluding the petitioners who are similarly situated. See *Rashbihari Panda etc. Vs. State of Orissa*, and thus in this way Article 14 of the Constitution is violated in the instant case.

It is not disputed that the State has full monopoly in the trade of liquor to run the business departmentally or through its officers on their behalf and eventually if this is not possible then equal treatment be given to the class of persons similarly situated. Therefore, while granting a licence, the petitioners should have also been given the same treatment, as the "doctrine of equality before law" is a necessary corollary to the high concept of the rule of law according to our Constitution. In *State of Haryana and Others Vs. Jage Ram and Others*, dealing with the provisions of Punjab Excise Act, 1914 vide para 18, it has been held that without due publicity in inviting tenders etc. or public auction, the grant of licence by private negotiations cannot be upheld. Similarly, in *State of Uttar Pradesh Vs. Shiv Charan Sharma and Others*, it has been held that State should sell the right by public auction and not on application of party. The public auction with open participation guarantees public interest being subserved. In *Rajamalliah and Another Vs. Anil Kishore and Others*, dealing with the Andhra Pradesh Excise Act, 1968 it has been held that despite the fact that the Government is the exclusive owner of all rights and privileges in regard to

intoxicant and no citizen has any right in regard to that, still where public revenue is involved because of ad hoc improvisation which jeopardises the public revenue, in such cases public interest is to be seen in achieving more revenue. Therefore the submissions in this regard made by Shri Mathur and Dr. Singhvi are hereby repelled.

In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, dealing with the proposition of Article 14 of the Constitution it has been held that:-

in the matter of awarding contract or granting largess, the Government has no absolute discretion and it has no liberty to act like a private party in choosing beneficiaries.

It has been further held that:-

the State need not enter into any contract with any one, but if it does so, it must do so fairly without discrimination and without unfair procedures.

In the instant case the procedure adopted in granting licences to respondent Nos. 5 to 11 is, no doubt, not only unfair but against the statutory provisions.

Similar view has been reiterated in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, wherein it has been held that:-

the constitutional powers conferred on the Government cannot be exercised by it arbitrarily or in any untruthful manner, it has to be exercised for the public good.

and Government cannot give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it.

If the facts of the instant case are tested with the touchstone of the ratio laid down in the above decisions of the apex Court of the land, then not only arbitrariness or capriciousness on the part of the State is apparent, but also by depleting the public revenue, the doctrine of equality under Article 14 is also being violated and as such in the interest of natural justice the agreement dated 2-2-1985 cannot be allowed to be acted upon.

Dr. Singhvi then applying the principles of doctrine of promissory estoppel argued that the State is estopped from changing terms of agreement dated 2-2-1985. I must say that the doctrine of promissory estoppel cannot be invoked where the action of the Government cannot be justified in accordance with the law. The respondents No. 5 to 11 joining hands with the State Government tried to block the augmentation of funds. In such circumstances, even the equity also does not favour them, In equity, it is settled that he who seeks equity must do equity and show his clean hands before the Court, whereas the allegations as have been made against the respondents No. 5 to 11 including the State Government by Shri Venugopal and Shri Dharmadhikari, pointing out from the records, amply demonstrate that they are trying to seek equity, but they have not done equity

and hence doctrine of promissory estoppel in such cases does not extend any protection to such persons like respondents No. 5 to 11.

Further, when the Government Officers act outside the scope of their statutory powers, the pleas of the promissory estoppel, are not available. On the other hand doctrine of ultra vires comes into operation in such circumstances and the Government cannot be held bound by the unauthorised acts of its officers i.e., public servants including Chief Minister or Ministers who are in the pay of Government and come within the definition of "Public Servant" as held in *M. Karunanidhi Vs. Union of India and Another*, . Therefore, the plea of promissory estoppel is not available to the respondents Nos. 5 to 11 against the State where the officers of the State have acted contrary to the public interest. (See *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*,

It is next argued by Dr. Singhvi that the petitioners have no locus standi to file these petitions. This doctrine of locus standi is given go-by in India and any member of the society having sufficient interest in the matter can maintain an action for judicial redress for public injuries arising from the breach of public duty or from violation of some provisions of law and seek enforcement of public duty and observance of such constitutional or legal provisions, (See *S.P. Gupta Vs. President of India and Others*, .

The case in hand relates to depletion of public revenue, as pleaded, by violating rule XXII of the Rules (supra) attracting the Constitutional rights guaranteed to each and every citizen of India under Article 14 of the Constitution of India, which is apparent from the record. Therefore, in such cases where not only the interest of the parties inter se is involved but also the interest of the public at large as to public revenue is involved, then the question of locus standi of third party becomes meaningless. I do not find any substance in the arguments of Dr. Singhvi that the present petitioners have no locus standi to maintain action brought before this Court.

Therefore, the Judiciary, being one guardian of the Constitutional rights of the citizens, in cases, if it is found that by creating discrimination the State has acted arbitrarily in depleting the public revenue, then it is the bounden duty of the Court to look into the matter and to grant appropriate relief rather than throwing the petition away on the ground of laches or locus standi.

The facts relating to under hand dealing brought to our notice during the course of arguments by pointing out from the record are so startling that I am put to observe that in the present (sic) when our country, with the expanding horizon of social, economic justice, a socialistic republic and welfare State which is of democratic set up endures to bring all the citizens above the poverty line, in achieving this pious aim who so ever be found indulging in such a rampant corruption by virtue of his high office, must be dealt with according to law so as to repose the confidence of the people, who have given full mandate to the popular government, that they are getting clean administration. In this way

alone social reforms in removing rampant corruption could be translated into action by strictly dealing with such devils of the society.

In this respect it is pertinent to observe that the framers of our Constitution made enough stringent provision for-dealing with such persons leaving no one immune if found indulging in such rampant including the constitutional functionaries for which the Parliament is vested with power to impeach them.

Looking to the present state of affairs, it appears that it is the need of the day to control and check the pilferage of revenue which is more important and if this is controlled and checked then that day will not be far away when imposition of new taxes to meet the expenditure of discharging obligatory functions of the State would not be needed.

Here, it will not be out of point to state that for achieving independence the patriots of "Bharat Mata" have sacrificed their lives and it is because of their great sacrifice that India earned independence. Though India became independent, yet to preserve the independence, it is required to fight against the evil and devils of corruption so that India may further achieve economic freedom as at present majority of people are living below the poverty line, for which it is immaterial whether the devils of corruption are dug out by executive or by the Judiciary by exercising their extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

Thus from the discussions aforesaid this is apparent that the agreement dated 2-2-1985 as arrived at between the State of M.P. and respondents Nos. 5 to 11 by which the State has granted licence in Form D-2 by issuing Letter of Intent to the aforesaid respondents for manufacturing spirit and further agreed to grant licence in Form D-1 for wholesale supply of country spirit against the statutory provisions. Therefore, the agreement dated 2-2-1985 is hereby struck down so as to remove or to minimise the vices of depletion of public revenue.

As a result, I concur with the conclusion reached by the Hon''ble Chief Justice and direct that while granting licences in Forms D-1 and D-2 to the Distillers the mode provided in the provisions of Rule XXII framed u/s 62(2)(h) of the M.P. Excise Act, 1915 be adhered to strictly.