
(2016) 01 BOM CK 0182

In the Bombay High Court

Case No : Writ Petition Nos. 1360, 1366, 1367, 1419, 1518 and 2120 of 2015

Rajendrakumar and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Bombay Prohibition Act, 1949 — Section 1, Section 11, Section 11, Section 117, Section 11A, Section 12, Section 13, Section 139, Section 139 (1) (a), Section 139 (1) (a), Section 139(1), Section 139(1)(a), Section 139(1)(n), Section 139(c), Section 14,

Citation : (2016) 3 AIRBomR 211 : (2016) 3 BCR 60 : (2016) 6 MhLJ 290

Hon'ble Judges : B.P. Dharmadhikari and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Arif Bookwala, Senior Counsel, Akshay Naik and Devendra Chauhan, Advocates, for the Appellant; S.G. Aney, Advocate General, Bharti Dangre, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—1. All Petitioners in these writ petitions are aggrieved by the declaration of Chandrapur as a dry district. The fact that they have licenses or permits issued by the Licensing Authority under the Maharashtra Prohibition Act, 1949 (Act XXV of 1949-- formerly Bombay Prohibition Act, 1949) which are put to an end because of this declaration and hence, their locus to file the challenge is not in dispute. Maharashtra Prohibition Act, 1949 is hereafter referred to as the Prohibition Act.

In Writ Petition No. 1360 of 2015 which has been argued as a lead matter, prayer is to quash and set aside the order dated 5.3.2015 issued by Respondent No. 1 declaring Chandrapur to be the dry district w.e.f. 1.4.2015 by enforcing prohibition in that district in general public interest. It is claimed to be violative of Articles 14 and 21 of the Constitution of India. From that day in exercise of its powers under Section 139(1) of the Maharashtra Prohibition Act, 1949 (Act XXV of 1949 -- formerly Bombay Prohibition Act, 1949), State prohibited issuing of

the licenses of types as specified in Schedule. State also clarified for removal of doubt that from said date, licenses in force shall stand canceled on taking action under Section 56(1) of the Act. Other prayer in Petition is to quash and remove the words "in any area" occurring in Section 139(1)(a) as null and void as they permit the State to prohibit the grant of licenses only in such smaller area and violate Article 14 of the Constitution of India. Declaration that after enactment of the Industries (Development and Regulation) Act, 1951 under entry 52 of the VIIth Schedule to the Constitution, as alcohol is covered under entry 26 of 1st Schedule, the Maharashtra Prohibition Act, to the extent it controls the alcohol industries, is rendered ultra-vires in view of Article 246 read with Article 254 of the Constitution of India, is also sought. However, during arguments no such contention was raised and our attention was not drawn either to the Industries (Development and Regulation) Act, 1951 or to the Articles 246 and 254.

2. Prayers in Writ Petition Nos. 1366, 1367 and 1419 of 2015 are only about the order dated 5.3.2015 and its validity. There is no prayer for declaring any statutory provisions bad. Prayer clause in Writ Petition 2120 of 2015 is on same lines. Prayer clause (a) in WP 1518 of 2015 is to issue writ of certiorari to quash order dated 5.3.2015 as it is arbitrary, unreasonable and based on misrepresentation of the facts. Mandamus to the Respondents not to violate Article 14, qua the residents of Chandrapur is also sought. Prayer clause (b) is not very clear but it seeks quashing of Section 139(1)(a) as ultra vires and also unconstitutional, on account of not mentioning the "prohibition in the interest of general public" being violative of Article 14 of the Constitution. Appointment of a Committee under the supervision of this Court to ascertain the true facts, desire of the general public to safeguard their constitutional rights. However, the Petitioners have not taken any pains to throw light on the exact meaning of or nature of relief under these prayer clauses.

3. Part of Chandrapur district as such constitutes a special area in the light of Section 1 of the Prohibition Act read with its Appendix 1A. Two adjacent Districts in State of Maharashtra viz. Gadchiroli and Wardha are already dry districts, where the State Government has decided not to part with its absolute privilege and not to make any exceptions by issuing the licenses. Government claims that this exercise is seriously jeopardized because of the availability of liquor legally in Chandrapur which borders the both. Part of Chandrapur also is a tribal undeveloped or under-developed area. Sizable women folk therein have sought total prohibition. Several Gram Panchayats have also passed the resolutions and demanded ban on alcohol. The movement to impose total prohibition by withdrawing the exceptions or the concessions allowed and urging the State not to part with by reclaiming the privileges is going on since 2010 i.e., when the present political party was not in power. It and its associate political party have been elected to power in 2014.

4. The Deotale Committee which undertook the survey was not formed by the present government (political body in power) but, by its opponents then in

power. That Committee conducted an open survey and hearings after due public advertisement. It called for views from the all concerned and also heard them. The political party then in power also kept the composition of the Committee politically neutral. All license holders opposed the demand, submitted their stand in writing and were also called for hearing. Their opposition is also taken note of by the Deotale Committee in its report. Submission of Petitioners is that as majority of the Gram Panchayats did oppose the imposition of ban or wanted the prevailing policy to continue, the impugned action must be quashed. Perusal of DCR i.e. Deotale Committee Report reveals that it invited everybody for hearing. It did receive the copies of the resolutions passed by the Gram Panchayats which supported the ban. It shows that majority of the Gram Panchayats passed a resolution in favour of ban i.e. supporting the move to declare Chandrapur as a dry district. Petitioners have not pointed out that any Gram Panchayat appeared before the Committee to oppose the proposed ban or then to point out that it does not want prohibition to be enforced. Such Gram Panchayats are also not before this Court to submit that their resolutions supplied to the Committee were forged.

5. Petitioners urge that out of 847 Gram Panchayats only 140 supported the move to impose ban by passing an affirmative resolution while others did not pass any such resolution. They rely upon the information received under Right to Information Act. Respondents submit that the query made under RTI Act restricted the period in relation to which the information was sought and thereby, the resolutions of such Gram Panchayats in favour of declaration of Chandrapur as a dry district passed after that period, did not enter the RTI answer. Petitioners dispute this. According to them, ban is wholly due to DCR which does not consider any Chandrapur specific material. Respondents deny this and urge that the Cabinet has looked into every relevant aspect, Chandrapur specific data and DCR was only one part of it. This much of the background is sufficient to proceed further to appreciate the controversy. We have to highlight this angle again while considering the challenge to DCR and the Cabinet Decision, in order to comprehend the scope open to us for intervention.

6. Senior Advocate Shri Bookwala opened the arguments on behalf of Petitioners and Senior Advocate Shri S.P. Dharmadhikari addressed the court on legal aspects. Advocate General Shri Aney and the Government Pleader Smt. B.H. Dangre argued for the State.

7. Shri Bookwala, from the report of the Deotale Committee, pointed out that in 2010 during winter session of State Assembly at Nagpur, a NGO by name Shramik Elgar took out a MORCHA (procession) of about 5000 women and met the then Chief Minister Shri Pruthwiraj Chavan and Home Minister (since deceased) Shri R.R. Patil. A private bill introduced by MLA Shri Sudhir Mungantiwar about making Chandrapur district alcohol free was discussed and an assurance was then given by the then Minister for State Excise on the floor of the House. A committee by name Deotale Committee was constituted to study the

situation in Chandrapur and to make suitable suggestions within three months. Meetings were then conducted in the rest house at Chandrapur on 11 dates between 4.3.2011 to 17.2.2012. Committee also recommended that till receipt of its report, the State should not issue new licenses. It visited respective Collectors and Police Superintendents at Wardha and Gadchiroli to understand the difficulties faced in keeping those districts dry as per the declarations. Report takes note of total number of municipal councils as 7,847 Gram Panchayats, 479 licenses, total revenue earned of Rs. 124.73 crores, illegal sales of Rs. 3.30 Crores. According to learned Counsel the report then considers material which is not specifically for Chandrapur district, both in favour and against the proposed ban. Petitioners state that said data is too general and applies to all open districts. Committee then recommends ban phase wise and in three years. It envisages initiation of an awareness drive and education, organizations like alcoholic anonymous at taluka level with its branches and toll free number and help centres, 100 bed hospital at District level to treat alcoholic persons. It also made suggestions on ways and means for making the funds available through the local mines, industries, power stations and out of professional tax collection. Shri Bookwala points out that the State could have implemented the report in its entirety and not part of it. By only acting upon the prohibition part, that too suddenly and doing away with the phase wise manner or other awareness program, vital for the success of ban, the State has violated Articles 14 and 21. As the adjacent areas still continue to be without ban, the desire to make Chandrapur alcohol free is bound to fail.

8. By inviting attention to replies to RTI query, he points out that DCR contains false assertion that 588 out of total 847 Gram Panchayats resolved in favour of ban. Only 140 gram panchayats did resolve accordingly. 473 gram panchayats passed a resolution opposing the proposed ban while 260 did not resolve either way. The representation allegedly signed by over a lakh of women has not been verified for its genuineness. This assertion on affidavit in petition is not denied by the Respondents. He also invites attention to additional affidavit and news item carrying the statement of the Chief Minister that State has no policy to free entire State of alcohol. The Deotale Committee was biased and accepted the documents like resolutions from a leader of Shramik Elgar and acted upon it without verifying its authenticity.

9. The State issued 58 new licenses after the committee recommended its discontinuation and citizens invested funds and labour in the business. Their families and career depend on these licenses. They can not be thrown on streets in a single day. The State is estopped from taking such decision and acting upon it hastily. He also points out the changing times, values and need to keep pace with it while contending that "res extra commercium" approach needs to be amended. As the State has not looked into all relevant aspects and left the licensees, their staff and their dependents at bay in a single day, the action is not bonafide but malafide one.

10. Senior Advocate Shri Dharmadhikari opened his submissions with request to note that the Petitioners do not waive their right to contend that fundamental right to trade also extends to intoxicants and Article 47 does not militate with it. He states that only in view of the binding precedents, petitioners can not request this Court to take a different view. He adds that such an effort may be made before the Hon''ble Apex Court.

11. He states that the State has not come up with a stand that it has ushered ban in Chandrapur as a first step in that direction and it has plans to introduce it in rest of the Maharashtra also. Selection of Chandrapur for ban is also not justified in as much as no Chandrapur specific reasons find consideration in the entire order. The general data looked into can apply to any and every town in the Country. The representations made opposing the ban, resolutions of various gram panchayats on same lines all contained the grounds relevant for the Chandrapur district and those have been ignored. Percentage of labour force in area is not stated to be large as compared to other districts and there are no valid reasons to single out Chandrapur.

12. According to learned Senior Advocate the issue can not be decided by desire of majority as it is complex one with various facets needing a scientific approach. The DCR wrongly records that majority of the Gram Panchayats are in favour of ban while actually, most of them have opposed it. The other local authorities like Chandrapur Municipal Corporation, about 7 Municipal Councils, Zilla Parishad are not even consulted. Impugned Order dated 5.3.2015 or the Cabinet decision dated 19.1.2015 are therefore not based on true and complete data. It is not therefore an informed decision. He relies upon *State of M.P. v. Nandlal Jaiswal*, , (1986) 4 SCC 566 and *Govt. of Maharashtra v. Deokar's Distillery*, , (2003) 5 SCC 669 to urge that though as per present legal position, Article 19(1)(g) may not be available, still the hostile discrimination and arbitrariness can be pressed into service via Art. 14. The impugned action and the decision is politically motivated and in fulfillment of the election promise by the MLA who later on became the Minister.

13. To substantiate his argument that Section 139 (1) (a) does not enable the State to pick and choose Chandrapur district for such purposes, he again reiterates absence of specific material on record demonstrating that Chandrapur only needed any special treatment or protection. Inviting attention to the judgment of learned Single Judge of this Court and the division bench judgment upholding it reported at 2004 (3) BCR 371--*S.M. Mallewar and Ors. v. State of Maharashtra and Ors.*, he submits that the Division Bench proceeds on premise that Art. 14 is not available to such Petitioners. Learned Single Judge has in , 1993 (1) Mah.L.J. 685 -- *S.M. Mallewar and Ors. v. State of Maharashtra and Ors.*, found the State action justified by tracing it to Section 139(1)(a) or (n). Shri Dharmadhikari urges that licenses in force and valid, can not be reached thereunder. Only course left open to the State was to leave it to the Collector to proceed under Section 54 or Section 56 of the Prohibition Act.

14. Advocate D.V. Chavan chose to adopt the arguments of respective Senior Advocates.

15. Shri Aney, Advocate General for the State has pointed out that since coming into force of Prohibition Act in 1949, the prohibition exists in entire State as mandated by the State Legislatures therein. State can only part with its privileges to a limited extent and that too strictly subject to said Act or Rules framed in that regard. To buttress his submission, he invites attention to the preamble of the Act as also its Section 1 and Section 11. Section 1 allowed State to declare a different date for the purposes of bringing into force the Prohibition Act in out still areas of erstwhile Chandrapur district as per "Schedule IA" due to peculiar local conditions. The old Chandrapur district consisted of the area which are presently identified as Gadchiroli district and Chandrapur district. He also invites attention to the fact that on 14.9.1992 State Government in discharge of its obligation under Article 47, made Gadchiroli "alcohol free" from 2.10.1992 and constitutionality of that decision has been upheld by this Court in its two rulings in same case i.e. of S.M. Mallewar and Ors. v. State of Maharashtra and Ors.

16. Shri Aney has thereafter pointed out the total prohibition imposed by Chapter II of the Prohibition Act and then impact of Sections 11 and 11A upon it. Provisions about control in Chapter IV, placement and wordings of Section 54 read with Section 56 as also Chapter XI in which Section 139 occurs are pressed into service to show that all form a chain and support the impugned action. By way of abundant precaution and presuming the DCR to be erroneous, he contends that power of the State under these provisions is not affected. There is no hostile discrimination and by withdrawing the concession extended in any district, that district can be made alcohol free by the State in its absolute discretion. He however submits that in case at hand, before reaching the impugned decision, an exercise to ascertain general public opinion was undertaken and it was Chandrapur specific only.

17. Learned Advocate General has relied upon several judgments to show that issue is already concluded against the Petitioners on all counts including fundamental right to trade, Article 14 etc. The concepts like hearing or promissory estoppel are not attracted and the scope of judicial intervention in such matters is very narrow. According to him, even after delegation of powers under Sections 54 and 56 by the State to the concerned Collector, the State, as a holder of the power, can still exercise it without prejudicing the acts completed by its delegate. While "regulating" any activity, power to prohibit is inbuilt. Our attention has been invited to the cabinet decision and to the DCR to demonstrate how the proceedings were conducted fairly and impartially. The action here is in discharge of the constitutional obligation and an instance of exercise of quasi-legislative power and a conditional delegation. Very narrow scope of judicial review open in such cases, is therefore reiterated. We will refer to the precedents cited by him at appropriate place in the body of this judgment.

18. We can briefly summarize the contentions of the Petitioners as under -

"A-- State of Maharashtra has not taken a policy decision to ban liquor in entire State as is evident from public statement of its Chief Minister. Hence, selection of only one district of Chandrapur for imposing such a ban is violative of Art. 14 of the Constitution of India.

B-- Ban is based solely on the recommendations of Deotale Committee Report (DCR) and procedure followed by it is itself defective, thereby materially affecting the correctness of its findings.

C-- Data looked into by the Deotale Committee is not correct and also biased one.

D-- In any case, State government ought to have accepted and acted upon the DCR as it is and its partial implementation is arbitrary. Committee had suggested ban to be brought about within three years stage-wise and not suddenly.

E-- Though there was a decision not to issue new licenses, about 58 new licenses have been allowed till 5.3.2013. DCR notes that Committee was not being taken seriously by the State.

F-- Chandrapur district then had 7 Municipal Councils and 847 Gram-Panchayats. Total 479 licenses were issued in its area. It generates total revenue of Rs. 789.40 Crores from these licenses while the illegal sales are of Rs. 3.30 Crores only.

G-- General data which highlights ill-effects of alcohol is not Chandrapur-specific, and hence, if accepted, warranted an All Maharashtra ban. Observation therein that average expenditure on liquor per family was Rs. 10,000/- was too general in nature. In absence of similar ban in adjacent State of Andhra Pradesh and districts like Nagpur or Yeotmal within Maharashtra, dry Chandrapur would be illusory.

H-- Assertion of the Petitioners that majority of Gram-panchayats did not support ban is not traversed by the State. DCR that majority of Gram panchayats were in favour of ban is false and unsustainable. Selecting Chandrapur only for such a ban while leaving other districts open, is arbitrary and violative of Art. 14.

I-- Concept of "res extra commercium" as judicially evolved and approach towards Art. 47 of the Constitution of India itself calls for a re-look. Tiger reserves of international repute have come up in the District and foreigners/ others visit it. A luxury train the "Deccan Odessi" carried such tourists also to Chandrapur to visit the said reserve. Further progress or developments and therefore the prospects of the area are adversely affected. Change in situation and passage of time also warrants proper correction in approach.

J-- S. 139(1)(a) or (n) do not enable State to cancel the licenses or the authorizations already issued and validly in force. Situation of present nature is regulated by S. 54 or S. 56 of the Prohibition Act, 1949 and the existing licenses need to be dealt with as per those Sections only.

K-- S. 139(1)(a) or (n) are bad as the power to choose smaller area to discontinue issuance of licenses, pass, permits or authorisations can not be left with the executive.

L-- Though contentions for a re-look to the concept of "res extra commercium" are urged, the Petitioners requested this Court to take its note only acknowledging the fact that as far as this Court is concerned, the field is occupied by the binding precedents under Art, 141 of the Constitution. They submit that Hon"ble Apex Court may be requested by them to revisit the matter."

19. Learned Advocate General Shri Aney with GP Mrs. Dangre has urged that -

"I-- Prohibition already exists all over the State and by allowing trade as per licenses, State parts with its absolute privilege and extends a very restricted concession to the license-holder.

II-- In so far as Chandrapur area is concerned, considering the peculiar situation, the Prohibition Act was not extended to its outstill areas as per Schedule IA. That area now forms part of present Gadchiroli district.

III-- Ban has been imposed in Gadchiroli district on 14.9.1992 and its validity has been upheld by this Court. Identical arguments have been turned down there.

IV-- Sections 54 or 56 of Act do not derogate from the State authority to withdraw, suspend or cancel the licenses or permissions granted. Complete prohibition is also envisaged in these provisions.

V-- Section 54 and Section 56 read with Section 11, Section 11A all show design of the State Legislature to give absolute supremacy to the people or State. This is reinforced by the scheme in which Section 139(1)(a) or (n) appear in the Statute book.

VI-- The Collector can also in exercise of powers delegated to him under Sections 54 or 56 of the Prohibition Act, order prohibition on any kind or type of licenses, pass, permits, authorization etc.

VII- Cabinet proceedings reveal an independent decision to lift the privilege or concessions allowed at Chandrapur.

VIII-- Petitioner Licensees are being shifted to other parts of State and hence, they do not suffer any loss or prejudice.

IX-- As it is absolutely within privilege of the State Government, arguments revolving round alleged defects in Deotale Committee proceedings or alleged absence of resolutions of majority of Gram Panchayats and about legality or format thereof, are immaterial.

X-- As the material looked into by the State is relevant, its sufficiency is not assailable.

XI-- In " res extra commercium" matters, Constitution does not permit such

challenge based on discrimination. Even otherwise, in present facts, it sans merit.

XII-- There is no challenge to the cabinet decision."

20. It is apt to deal with *Res extra commercium* aspect at threshold. In *P.N. Kaushal v. Union of India*, , (1978) 3 SCC 558, Hon. Three judges of Hon. Apex Court while answering question "why drastically regulate the drink trade?", explain the social rationale through Brandies brief. This illuminating discussion brings on record the idea behind adopting Article 47 as the part of directive principles. Said discussion holds good even today. It quotes copiously from works or thoughts of A.E. Houseman, Thomas Bacon, a criminologist Dr Walter C. Reckless, an Indian author, Dr Sethna, statistics on arrests with comment of Richard D. Knudten, remark of President Brezhnev, Abraham Lincoln, Great Cricketers, Authors like George Bernard Shaw which need not be reiterated. In paragraph 21, Hon"ble Apex Court points out that the constitutional test of reasonableness, built into Article 19 and of arbitrariness implicit in Article 14, has a relativist touch. Indian scenario is explained by reproducing what Mahatma Gandhi wrote. The Tek Chand Committee, stand of Nehru, views expressed by other Hon. Judges have all entered the consideration. In paragraph 37, it is observed -

"We, the people of India", have enacted Article 47 and "we, the Justices of India" cannot "lure it back to cancel half a life" or "wash out a word of it", especially when progressive implementation of the policy of prohibition is, by Articles 38 and 47 made fundamental to the country's governance. The Constitution is the property of the people and the court's know-how is to apply the Constitution, not to assess, it. In the process of interpretation, Part IV of the Constitution must enter the soul of Part III and the laws, -----... -----".

21. In *State of Kerala v. Kandath Distilleries*, , (2013) 6 SCC 573, in para 24, the Hon"ble Apex Court reiterates that Article 47 is one of the directive principles of State policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. The State has, therefore, the exclusive right or privilege in respect of potable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are *res extra commercium*. In para 29, Hon"ble Apex Court indicates that the State can always adopt a "restrictive policy" e.g. reducing the number of licences in a particular district or a particular area, or not to grant any licence at all in a particular district, even in cases where the applicants have satisfied all the conditions stipulated in the rules and the policy permits granting of licences. In other words, the satisfaction of the conditions laid down in the Rules would not entitle an applicant as a matter of right to claim a distillery licence which is within the exclusive privilege of the State. Hon"ble Court held that petitioner

before it failed to establish a legal right or to show that there is a legal duty on the Commissioner or the Government to issue a distillery licence. While addressing challenge under Art. 14, the Hon''ble Apex Court observes that when the State Government decides to grant the right or privilege to others, it cannot escape of the rigour of Article 14. In such a situation, it is for the party who complains to establish that a discriminatory treatment has been meted out to him as against similarly placed persons but it cannot demand a licence for establishing a distillery unit, as a matter of right.

22. Petitioners do not dispute that this Court is bound by the above precedents and can not be called upon to take a different view. They have pointed out the dissenting views of the Hon''ble Apex Court only to demonstrate their attempt to have a re-look and to urge that province of violation of Art. 14 is still virgin. In *Synthetics and Chemicals Ltd. v. State of U.P.*, , (1990) 1 SCC 109, in para 106, Hon''ble Shri Oza, J. has placed a dissenting note that there is nothing like privilege vested in any one of the functionaries of the State and in the background of this basic features of our Constitution the doctrine of privilege is difficult to reconcile with if we examine this privilege of trading in commodities injurious to health and dangerous to life in the context of Article 21 and Article 47 of our Constitution. In Constitution Bench judgment in *State of Punjab v. Devans Modern Breweries Ltd.*, , (2004) 11 SCC 26, two Hon. Judges of Hon. Apex Court took a dissenting view. In *State of Orissa v. Narain Prasad*, , (1996) 5 SCC 740, in para 34, Hon''ble Apex Court considers the arguments based on dissenting note of Hon''ble J. Shri Oza and reject it. We will revert back to this aspect of dissent little latter. Here we can conclude that we can not adjudicate this matter by following the minority view of the Hon''ble Apex Court. View expressed by the majority and ratio therein becomes the law of land under Art. 141 of the Constitution.

23. It will be proper to begin discussion with judgment of this Court on similar measure in relation to Gadchiroli district. We find that in the light of judgment of the Division Bench at 2004 (3) BCR 371--S.M. Mallewar and Ors. v. State of Maharashtra and Ors. and earlier judgment delivered by the learned Single Judge, the controversy mostly stands concluded against the Petitioners. Division Bench judgment is a Letters Patent under Clause 15 against the judgment dated 26.3.1993 passed by the learned Single Judge in bunch of writ petitions upholding the constitutional validity of the statutory notification dated 14.9.1992 issued by the Govt. of Maharashtra under Section 139(1)(a) of the Bombay Prohibition Act, 1949 declaring the area of Gadchiroli district as "dry district" and enforcing "prohibition" throughout that district with effect from 2nd day of October, 1992 and follow up and consequential orders issued by the Collector of Gadchiroli on 15.9.1992 directing cancellation of subsisting licences expiring on 31.3.1993 after expiry of 15 days. To point out how the arguments in this LPA were on same lines, perusal of paras 3 and 4 of the reported judgment is necessary. Appellants, contended that Section 139(1)(a) of the Act empowers the State Government merely to prohibit the grant of any kind of licence, permit

etc. and the State Govt. was not concerned with the premature cancellation of licences already issued and the subject matter concerning such cancellation of licences was dealt under Sections 54 and 56 of the Act. They urged that Section 139(1)(a) of the Act was unconstitutional as the said section suffers from vice of excessive delegation of legislative power and did not prescribe any guideline governing exercise of power thereunder. Appellants argued that the said section enables the Government to act arbitrarily as it does not prescribe the time or conditions or circumstances in which the power conferred thereunder may be exercised by the Government. Section conferring unfettered powers on the State Government is also violative of Article 14 of the Constitution of India. Though the State is not precluded from regulating the trade and business in potable liquor merely because it imposes tax and fee on purchase or sale and income is derived from such liquor, the State cannot discriminate between citizens carrying on business in liquor within the restrictions. They claimed that citizen has the right to carry on trade or business subject to the limitation, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business. A citizen permitted to carry on such trade or business would be entitled to claim equal right as against other citizens. As the State did not impose any prohibition or monopolize the business, the same may be carried on by the licensee without being subjected to any discrimination. Such a right although may not be elevated to the status of a fundamental right, but all the same it is a right. The Prohibition Act, 1949 regulates the rights of the citizens in carrying on business. Appellants urged that it was beyond any cavil that a right to carry on business in liquor being not absolute, the same would be subject to such restrictions and limitations as may be imposed by law. Therefore the statutory notification issued by the Collector of Gadchiroli is violative of the provisions of Article 19(1)(g) read with Article 301 of the Constitution of India.

24. According to the appellants in S.M. Mallewar case, the following conclusions drawn by the learned Single Judge (i) that Section 139(1)(a) of the Act is valid and not ultra-vires to the constitution of India; (ii) that the order passed by the Collector is quasi legislative in character and is not violative of Article 14 or Article 301 of the Constitution; (iii) that the State was not bound to grant hearing to the residents of the locality before issuing the order dated 14.9.1992 or before taking the follow-up action by making the subsisting licences inoperative or canceling them or (iv) that the State had authority to direct the Collector to cancel the licences in view of the provisions contained in Section 139(1)(a) and 139(1)(n) of the Act, that (v) the order for canceling the licences and permits etc. had a nexus with the policy and object of the Prohibition Act, the order of canceling the licences was thus for a cause within the meaning of Section 56(1)(a) of the Act; and (vi) that it was the duty of the State Government to enforce the impugned order as a part of rule of law in the State of Maharashtra faithfully, vigorously with immediate effect, were not sustainable in law.

25. After applying the mind, this Division Bench in S.M. Mallewar observes--

"18. On consideration of the settled law laid down by the Apex Court in the aforementioned cases, we are of the considerate opinion that the impugned judgment and order passed by the learned Single Judge is perfectly legal and correct. We are in respectful agreement with the view expressed by the learned Single Judge that the order dated 14.9.1992 issued by the State of Maharashtra has acquired force of law and is not violative of Articles 14, 19(1)(g), 47, 300A and 301 of the Constitution of India. It is well settled law that the State alone has exclusive right to deal with the subject matter and when it parts with some of its privileges in the form of licence to the citizens, no vested right is created and, therefore, the contention of the learned counsel for the appellants that the order issued by the State of Maharashtra on 14.9.1992 is unconstitutional, is required to be rejected. Similarly, we do not find any merit in the argument that the said order discriminates between tribals and non-tribals."

So far as the validity of Sections 139(1)(a) and 56 of the Prohibition Act is concerned, the Division Bench found that the Apex Court upheld the constitutional validity of these provisions of law in the case of *State of Bombay v. F.N. Balsara*, , AIR 1951 SC 318. We may here point out that in *State of Punjab v. Khan Chand*, , (1974) 1 SCC 549, at page 563, Hon"ble Apex Court states :

"31. In *State of Bombay v. F.N. Balsara*, one question which fell for consideration was whether the provisions of Sections 52, 53 and 139(c) of the Bombay Prohibition Act (Act 25 of 1949) were valid. Section 52 of this Act empowered an authorised officer to grant licences, permits, etc. in cases not specifically provided for, Section 53 dealt with the form in which and the conditions under which licences etc. may be granted and Section 139(c) stated that the State Government may by general or special order exempt any person or class of persons or institution or class of institutions from the observance of all or any of the provisions of the Act or any rule, regulation or order made thereunder. The High Court of Bombay held these Sections to be bad as they did not provide any guidance for the exercise of the powers. This Court, in appeal, held the Sections to be valid by saying:

"A legislature while legislating cannot foresee and provide for all future contingencies, and Section 52 does no more than enable the duly authorized officer to meet contingencies and deal with various situations as they arise. The same considerations will apply to Sections 53 and 139(c)."

32. In enacting a general law it is not possible to foresee every situation or to envisage every contingency and to provide specially for it by excluding the operation of the law wholly or in part in respect of such situations or such contingencies. Power is, therefore, conferred by statutes on the executive to exempt persons or bodies from all or any of the provisions of an Act".

26. The nature of power exercised is already held to be quasi-legislative power and scope of interference therewith is well recognized. The Hon"ble Apex Court in *Union of India v. Cynamide India Ltd.*, , (1987) 3 SCC 720, in para 7, points

out the concept of quasi-legislative exercise. It states that the administration and administrative adjudication may also be of general application and there may be legislation of particular application only. It also points out how the Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations arise when the owner of property or goods is compelled to sell his property or goods to the Government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it. Hon"ble Apex Court explains that in such situations the determination of price may acquire a quasi-judicial character. Otherwise, price fixation is generally a legislative activity. It then points out that in said exercise, those who are most vitally affected are the consumer public. It is for their protection that price fixation is resorted to and any increase in price affects them as seriously as any decrease does a manufacturer, if not more.

27. The parameters relevant for exercising the jurisdiction in such matter are laid down by the Hon"ble Apex Court in several case. Accordingly, We have to ascertain whether the power is exceeded or abused, or is there some error of law, whether a breach of the rules of natural justice has taken place or then whether the decision is perverse or erroneous. This Court is not concerned with correctness or otherwise of a policy decision, if it has a sanction of law. If steps to implement such a policy decision have a statutory backing, again no intervention is possible. Very recently, this Court has in a matter concerning price fixation reiterated these limitations in , 2015 (9) LJSOFT 63 : 2015 (5) Bom. C.R. 799 - Seed Industries Association of Maharashtra and ors. v. State of Maharashtra, through its Secretary Agriculture, Animal Husbandry, Dairy Development and Fisheries Department and ors. We find that the scope of judicial review of an administrative action in discharge of quasi legislative function being very limited, unless the action is palpably arbitrary or mala fide, it is not open to interference.

28. In S.M. Mallewar and Ors. v. State of Maharashtra and Ors. (supra) the Division Bench has endorsed the finding of the learned Single Judge that impugned action similar to one here was/is quasi-legislative in character. Hon"ble Apex Court in Ugar Sugar Works Ltd. v. Delhi Admn., , (2001) 3 SCC 635, in para 18 while considering the challenge to liquor policy, observed:--

"18. 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."

29. This fetter on Court powers and impact of Article 14 in prohibition matters can be also gathered from *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566, where the Hon. Apex Court observes:--

"34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India*. We.. ----- -----".

This Court had already an occasion to examine this aspect based on Art. 14 in *S.M. Mallewar* (supra) and answer then given by it holds good even now. We are required to note here the large or wide latitude which must be left with the State in such matters. This ruling also points out the limited powers available to this Court.

30. The report of Deotale Committee (DCR) and Cabinet Decision now call for appreciation. It is to be noted here that the records of Cabinet proceedings are not in dispute before us. It looks into the report of the Deotale Committee. Coal Mines, Cement Factories, Paper Mills, Thermal Power Station, other industries, large labour force and nature of work affected by intoxicants also find mention. The Cabinet notes that consumption of alcohol prejudices safety, health and output in these industries. Women, Youth, Children and poor class are worst sufferers. This class constitutes about 85% of the total district population. Tribals are easy prey to the liquor and their number was 1,10,826. Problem of naxalite movement in the area and fact that intoxicants help in catering to it also appear to be considered. Liquor ban in adjacent areas of Gadchiroli and Wardha is adversely affected because of open Chandrapur, large number of representations submitted by people's representatives, Social organizations, Citizens, Social workers and liquor traders are also looked into. 2343 representations out of total 3090 favoured the imposition of ban. Representations with signatures of more than 1 Lakh women also supported ban. Shramik Elgar gave a demand letter signed by 1,07,949 ladies while Gurudeo Sewa Mandal, with signatures of 30,000

persons and demanded that Chandrapur district be made alcohol free. It can not be in dispute that all this material is Chandrapur specific only. Cabinet then takes note of recommendation of DCR to implement the ban in next three years in stages as per measures suggested by it. Experience of Deotale Committee during its visit to Gadchiroli and Wardha is also mentioned. Cabinet then briefly narrates the remarks or opinion of various departments of the State Government like Finance/Revenue and alternates suggested by it to make up for the shortfall, Rural Development, Law and Judiciary, Social Welfare and Special Assistance, Women and Child Welfare, Home(police) department, remarks of Commissioner of State Excise etc. Counter remarks of State Excise on views of Finance department, Home department, extent of illegal trade going on at Wardha and Gadchiroli since 2010 till October, 2014, decision of the Committee under Chairmanship of the then president of the State Assembly on 20.12.2012 at Nagpur have all entered the consideration of the Cabinet. It has ultimately recorded that after declaration of Wardha and Gadchiroli as dry districts, it is resolved to declare Chandrapur as "dry or alcohol free district". Decision also states that all liquor licenses are stopped and henceforth, no permissions to drink alcohol would be granted in Chandrapur. Steps undertaken to curb and stop illegal distilling are also narrated. It finally declares that as entire district of Chandrapur has become a dry district, all retail sale licenses therein shall stand canceled. These licenses shall be transferred to other districts (except Wardha, Gadchiroli and Chandrapur) of Maharashtra following the prevailing Rules and guidelines as per the request of the license holder. These proceedings of the Cabinet are not in challenge before us. Bare perusal thereof reveals an independent and balanced approach of the Cabinet. The agitation to ban intoxicants in Chandrapur, private bill in 2010 during winter assembly session of State at Nagpur, MORCHA (procession) of about 5000 women from Chandrapur by Shramik Elgar meeting the then Chief Minister Shri Pruthwiraj Chavan and Home Minister (since deceased) Shri R.R. Patil, declaration or promise on the floor of the House all show the slow pace at which events progressed and the tenacity of the social organizations or the volunteers in the matter. Government of the day only acknowledged the demand of the enlightened Society and decided to honour it. It had ample material relevant to the demand and still proceeded to appoint a neutral Committee to ascertain the ground position. Efforts made by Deotale Committee are appearing in its report i.e. DCR. Neither report of that Committee nor decision of the Cabinet thereafter show that it is palpably arbitrary or mala fide. There is no procedural or jurisdictional error in as much as only relevant material has been used by the State. There is no irrationality, unfairness, perversity and unreasonableness. Sufficiency or adequacy of such material can not form the issue before us.

31. It is not the case that Chandrapur Municipal Corporation or Municipal Councils, Zilla Parishad etc. were not aware of the proceedings of the Deotale Committee. Hearings conducted by it were open and public. There was wide publicity and these local bodies or their representative could have appeared in

those hearing to put forth their point of view. Similarly, the Gram Panchayats which opposed the move could have also participated in those proceedings. Though DCR itself shows that copies of number of Gram Panchayat resolutions were supplied by one Parimita Goswamy, that by itself is not sufficient to accept the challenge of the Petitioners. She acted on behalf of NGO Shramik Elgar and recording reveals transparency in the working of Committee and its unbiased nature. The effort of Petitioners through the affidavit dated 31.10.2015 of Deepak Shankarlal Jaiswal filed in Writ Petition No. 1360 of 2015 to urge that trade had no representation on the Deotale Committee is misconceived and erroneous.

32. DCR also shows that 218 Gram Panchayats passed resolutions favouring ban during query period of RTI application. These 218 Gram Panchayats write in reply to RTI query that they have not passed any such resolution during said period. Names of few Gram Panchayats (about 25) may figure more than once in DCR but that by itself cannot advance the cause or case of the Petitioners. We also note 587 as the number of Gram Panchayats in favour of the move as disclosed by the State through affidavit dated 20.11.2015 of one Vijay Chinchalkar, Superintendent of State Excise at Chandrapur which attempts to support the Appendix 25 with DCR. A disputed question of facts definitely arises and it is not necessary to dwell upon it as it does not have material bearing on the controversy. This report is not the sole basis for its decision and the State Cabinet has looked into other material also. According to Petitioners only 345 Gram Panchayats (about 40%) support the move and we hold that that by itself is sufficient to support the action. We find no force in the submission that about 200 Gram Panchayats have passed resolutions in favour of proposed ban prior to year 2010 and hence, the same were stale and could not have been acted upon, equally misconceived. No Gram Panchayat or then any local body has objected to the recommendations of DCR or sought intervention of this Court. Petitioners could not point out any resolution by these bodies condemning the DCR or the move of the State Government.

33. The recommendation of the Deotale Committee to discontinue issuance of fresh licenses was much before culmination of the proceedings by it. Had State Government foreseen the nature of recommendation to be made beforehand, an argument of prejudice would have been advanced. The State Government was justified in adhering to its normal course till the actual decision was reached by it on the issue. DCR was only one of the relevant factor to be looked into by it and hence, not taking such a policy decision on its basis can not be faulted.

34. Contention of the Petitioners that in absence of similar ban in adjacent districts or State of Andhra Pradesh, the ban in Chandrapur is bound to fail, needs rejection as it is matter of record that the ban is in force in Wardha and Gadchiroli districts since last few decades. Moreover, when the decision to make Chandrapur district alcohol free is found legal on all counts, the difficulties posed by wrong elements in its execution can not be put forth to set it aside. Similarly

an argument that trade in liquor was permitted in Chandrapur district for last several years is again not a valid ground of attack.

35. Election promise by a candidate who gets elected or its fulfillment after such election by the State Government also can not offer any ground to attack the move itself. It was not to extend any illegal or unwarranted favour but to attempt to discharge the constitutional duty. The MORCHA was taken out by a non-political body that too during regime of other political party. That party then in power made the promise in the house but lost the elections. Political party of the person making the promise on the eve of election has succeeded and continued the steps or efforts initiated by its predecessor opponent party. It ultimately could act on promise made by its opponent. All these developments show that the cry to free Chandrapur from intoxicants was non-political as also a popular demand. Keeping such an election promise which in fact advances the constitutional goal, can not be seen either as not-bonafide or malafide or arbitrary. Petitioners' efforts to show that State Government could not have taken cognizance of any other material except DCR also merits rejection.

36. In the wake of Maharashtra Prohibition Act, 1949 which is in force since last 66 years and obligation cast by Article 47, it cannot be said that the State of Maharashtra has no policy to free the entire State from intoxicants or pernicious trade. Steps taken in Wardha or Gadchiroli and its extension now to Chandrapur district definitely show that the State is getting slow but positive response in direction as seen by the founders of the Nation. We, therefore, find no substance in the allegation that stand of Chief Minister and learned Advocate General are inconsistent. A news paper report dated 23.7.2015 has been relied upon to ascribe such a statement to the Chief Minister. Argument of learned Senior Adv. Shri Dharmadhikari that such selective withdrawal of the privileges parted by the State from a small area can be subjected to tests laid down by Article 14 and hence such decisions can be scrutinized to find out whether they are arbitrary, hostile or malafide one, must also be dismissed. State has taken its own decision independently and it was not bound by any suggestions contained in DCR. It was and is within its discretion to accept and act on even some part of it.

37. Moreover, in such matters, the view of majority of persons present and voting can not always be the guiding or relevant factor at all. Inherent duty of State under Article 47 can not be compromised by such majority view. In any civil society, the weaklings like old aged infirm persons, women and juvenile are bound to be worst victims of the alcohol. Spirit behind conferring special status on women in Prohibition Act and scheme of Section 11A of the Prohibition Act can not be overlooked. An earning man heading the family may not always care for them and spend more for his enjoyment or entertainment. On the contrary, normally a woman will always first think of welfare of the entire family. State Government is bound to honour this legislative wisdom and see that Constitutional goal flowing from Article 47 is not defeated. We find that the fact of long standing demand by sizable number of women from the area and no

opposition to it by any women group itself constitutes sufficient material in this background to reclaim its privilege for the State. We hasten to add that such verification or demand is not always necessary if State wishes to act in furtherance of its privilege. Step like ascertaining public view for that purpose while proceeding under Section 11 read with Section 139 of the Act is not at all a relevant factor or a condition precedent. Appointment of an independent Committee to ascertain the ground position by itself is an indication of open mind of State. DCR shows that majority of the Gram Panchayats did not oppose the prohibition and it does not appear to be a perverse finding as none of the Gram Panchayats chose to oppose it by participating in any public hearing before the Deotale Committee.

38. When statutory provisions, history, situation prevailing and geographical location of the Chandrapur district are kept in mind, old demand to bring about prohibition, demand by the sizable number of women in the area, Morcha of 5000 women on State Assembly who come from Chandrapur to Nagpur for it, no opposition to the government move to impose ban by any Gram Panchayat by appearing before the Deotale Committee appointed by the previous Government, Election Promise by a political opponent; all form a material relevant to the performance of its duty under Article 47 of the Constitution of India. These factors are relevant and sufficient in law to sustain the State's policy decision. As per our Constitution, trade or business in Pernicious Commodities is not allowed at all. It is State's absolute privilege to permit any person to indulge in it but subject to such conditions as it may deem fit to impose. The State Legislation contains the provisions like Section 11 and Section 139 which recognize this prerogative of the State and mould it with Article 47 of the Constitution of India. Hence, in all matters connected with alcohol and liquor, primacy is given to exercise of its supremacy by the State and absolute power is conferred on the State. Political majority shall regulate the use thereof. However, at local level, the political equations may vary and hence, prohibition is forced when at Gram Panchayat level, if the Gramsabha or women folk so decide. The entire scheme of the Prohibition Act therefore shows power with the State Government to order ban or discontinuation of the licensing, if the State Government on relevant material, decides accordingly. No body can force the State to part with its privilege or the terms thereof. State can part with it conditionally or add to those terms in its absolute discretion. If the State exercise is based on relevant considerations, nobody can take an exception to it. We do not find any substance in the contentions as raised.

39. Petitioners urge that as rest of Maharashtra is still not declared dry, subjecting them to such prohibition is violative of Article 14. In *State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709, Hon'ble Apex Court examines constitutional validity of A.P. Prohibition Amendment Act, 1995 on the touchstone of legislative competence, violation of fundamental rights and breach of Art. 14. While dismissing the challenge on all counts, its Hon. Three Judges Bench observes -

"50. It was suggested in parting that the policy of prohibition is a difficult one to enforce, that though laudable in principle, it gives rise to several other ills and so on. We need not express any opinion on these comments since we are concerned only with the constitutionality of the impugned statutes and not with their wisdom.

51. For the above reasons, the attack upon the constitutionality of the Andhra Pradesh (Amendment) Act 35 of 1995 both on the grounds of legislative incompetence and violation of fundamental rights fails. The Amending Act, which has been given retrospective effect from the date of commencement of the principal Act, i.e., Andhra Pradesh Prohibition Act, 1995, is constitutionally valid. The writ petitions challenging its validity are accordingly dismissed."

We find that Article 14 can not be relied upon and resorted to question any step of State Government in an attempt to discharge its obligation under Article 47 of the Constitution of India. In present matter, Article 14 is not available to the Petitioners at all.

40. Petitioners rely on judgment of Hon. Apex Court in State of M.P. v. Nandlal Jaiswal, , (1986) 4 SCC 566, in para 33--

"33. But, before we do so, we may at this stage conveniently refer to a contention of a preliminary nature advanced on behalf of the State Government and Respondents 5 to 11 against the applicability of Article 14 in a case dealing with the grant of liquor licences. The contention was that trade or business in liquor is so inherently pernicious that no one can claim any fundamental right in respect of it and Article 14 cannot therefore be invoked by the petitioners. Now, it is true, and it is well settled by several decisions of this Court including the decision in Har Shanker v. Deputy Excise and Taxation Commissioner that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and Respondents 5 to 11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that article."

We find that in this paragraph, the Hon"ble Apex Court was considering the question of grant of larges i.e. licenses to trade and the argument based on Article 14 was not made to further the trade or to defeat the spirit of Article 47.

We can not, in matter at hand say that State is acting in arbitrary manner. There is sufficient material on record to show that the State Government has taken note demand of weaker section, no opposition to it by majority and exercised its power under Article 47 of the Constitution of India. Next paragraph i.e., Para 34 of this judgment of Hon''ble Apex Court which reconciles the spirit of Article 14 with pernicious trades and points out the need of larger or wide latitude to the State in such matters is already reproduced by us above.

41. Dissenting view of Hon''ble J. S.B. Sinha in Govt. of Maharashtra v. Deokar''s Distillery, , (2003) 5 SCC 669, in para 46 onwards is also relied upon by the Petitioners. This decision also shows that the State had permitted the trade in liquor and Article 14 was not invoked to dilute the rigour of any step taken under Article 47. The question whether State is entitled to recover from the licensee the wage arrears paid due to retrospective hike in the salaries of the employees after the expiry of the licence fell for consideration. By the Maharashtra Civil Services (Revised Pay) Rules, 1998, effect was given to the recommendations of the Fifth Pay Revision Commission with effect from 1-1-1996 and State had issued order in 2000 to recover amount of arrears of wages payable to its employees posted at establishments of the manufacturers, also retrospectively. Traders and Manufacturers opposed it as after the actual sells at a pre-determined price in past, the accounts were settled and approved price fetched was fully appropriated. It was not possible for them to recover any additional amount from those customers. Dissenting judgment finds the contract between the State and the licensee statutory one and the rights and obligations of the parties, to come to an end with the cessation of that contract. In absence of a contract contrary thereto, such a retrospective demand after expiry of license period was held unsustainable. Thus, this dissenting view has no bearing on Article 47 facet and does not advance the cause of Petitioners.

42. Dissenting observations of the Two Hon''ble Judges of Hon''ble Apex Court in State of Punjab v. Devans Modern Breweries Ltd., , (2004) 11 SCC 26, in para 50 or 171 to the effect that when a person has been granted a licence strictly in conformity with the Excise Act to carry on his business activities in terms of the statute operating in the field, the same can neither be termed as pernicious, obnoxious and injurious to health, safety and welfare of the general public; or no public interest can be inferred by any court of law by going beyond the statutory provisions; or that even monopoly of the State either in itself or in any agency created by it for manufacture, possession, sale and distribution of liquor can be created only by a statute which must conform to the provisions of clause (6) of Article 19 of the Constitution i.e. by making a valid law, by way of a regulatory legislative enactment; or on the propriety of perspective adopted by the Hon''ble Apex Court while interpreting such legal provisions need not also detain us more. This dissenting view does not lay down that such a trade can continue in defiance of a measure taken as per law in the larger public interest. Reliance upon , (1979) 3 SCC 489 - Ramanna Dayaram Shetty v. International Airport Authority of India, to explain the doctrine of equality embodied in Article 14 can also not

be countenanced in these facts. In this background support being drawn from para 60(g) in *Khoday Distilleries Ltd. v. State of Karnataka*, , (1995) 1 SCC 574, which reads -

"(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business." is also misconceived. We have already seen above how this view is appreciated in later judgments. Judgment of Hon''ble Apex Court in , AIR 1967 SC 1368 - *Krishan Kumar Narula v. State of J&K*, can not also help the petitioners as in said judgment, there was no need to examine the controversy of present nature. We have at the beginning of this judgment looked into *State of Kerala v. Kandath Distilleries*, , (2013) 6 SCC 573, where the Hon''ble Apex Court observes that if the State decides to grant the privilege to others, it cannot overlook Article 14."

43. When the trade in any intoxicants itself is *res extra commercium*, to add concepts under Article 14 to it and make it potent enough to attempt to defeat the mandate of Article 47, will be not only an inconsistent but also unconstitutional approach. Petitioners can not with the help of Article 14 translate that which is seen constitutionally improper or evil into something good. Little later, we have considered the legislative design giving maximum latitude to the State and purpose behind it. The trade pernicious in nature is allowed as a concession by giving very wide and absolute powers to the State through stringent provisions. Perhaps Legislature has attempted to create some equilibrium thereby between the nature of trade and interest of a common man or public interest. Petitioners have accepted to be bound by all these provisions with open eyes. After due deliberations, we conclude that the Constitution of India does not permit recourse to Article 14, if it is aimed at defeating a welfare step under Article 47 thereof.

44. Next issue raised is whether Collector while exercising the powers to regulate under Sections 54 and 56 may also prohibit issuing of the licenses. Hon''ble Apex Court in *Union of India v. Asian Food Industries*,, (2006) 13 SCC 542, has observed that in certain circumstances regulation may amount to prohibition. But, ordinarily the word "regulate" would mean to control or to adjust by rule or to subject to governing principles, whereas the word "prohibit" would mean to forbid by authority or command. The expressions "regulate" and "prohibit" are held to inhere in them elements of restriction of a varying degree. The element of restriction is inherent both in regulative measures as well as in prohibitive or preventive measures. Hon. Court points out that the terms, should be construed having regard to the text and context in which they have been used. It noted that Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 used words prohibition, restriction and regulation and thus, were meant to be applied differently. In present facts, we are not required to answer any question regarding the scope of the Collector's power under either Section 54 or Section

56 of the Prohibition Act.

45. To proceed further, it is essential to examine the scheme of the Prohibition Act, 1949. It is important to understand the powers which flow from Section 11, 54, 56 and 139 (1)(a) and (n). We can not overlook the settled position on perspective to be adopted while comprehending the spirit behind the enactment. Directive principles to the extent possible need to be kept in mind. In the backdrop of the cherished constitutional philosophy, construction of the scheme of the Prohibition Act can not be by ignoring the foundation in the shape of Article 47 of the Constitution. Directive principles are fundamental to the governance of the State and must be adhered to or imbibed in understanding any welfare statute so as to safeguard the weak-lings like women, children and old people. Obvious object of the Act is to bring about absolute prohibition in the State of Maharashtra. When it was enacted, precaution was taken to see that in tribal areas, State government should enforce it after due deliberations. That only appears to be the reason why it was enforced belatedly in outstill areas mentioned in Schedule IA of the Act as per its Section 1. But once, it is extended, this belated introduction ceases to be of any relevance.

46. Chapter III of the Act consists of Sections 11 to 24A and is on "Prohibition". We need not point out all sections therein and it can be easily seen that all types of activities, dealings or trades in any intoxicants are totally prohibited. Section 11 is a non-obstante provision overriding these injunctions, but then person engaging therein must have a license to undertake that specific activity. The State thus parts with its privilege only in favour of such a licensee and to the extent prescribed in it. The license and the act allowed thereby are expressly made subject to the Act, Rules etc. framed. Hence, if the State Government so decides, it can issue a license, permit, pass, authorisation and the holder thereof is bound by its terms/conditions. The instruments thus issued are also subject to the statutory provisions. None of the Petitioners before us has pointed out any provision in any license, permit, pass, authorisation etc. enabling them to operate for the entire period of its validity. Proforma of the licenses given in the respective Rules show that it can be canceled in accordance with the provisions of Section 54 and 56 of the Act. Hence, it is obvious that such a license etc. can not be superior to and must yield to the statutory provisions under which it is born and subject to which it has to operate.

47. Sections 54 and 56 appear in Chapter IV dealing with "Control, Regulation, Exemptions". Section 54 is power to cancel or suspend the license and permits. S.55 denies compensation or refund of fee to a holder whose license is canceled or suspended under Section 54. Section 56 empowers the issuing authority to suspend or cancel the license for reasons other than those falling under S. 54 of the Act. These provisions read as under --

"54. Power to Cancel or Suspend Licenses and Permits - (1) The authority granting any licence, permit, pass or authorization under this Act may for reasons to be recorded in writing cancel or suspend it,];

- (a) if any fee or duty payable by the holder thereof is not duly paid;
- (b) if the purpose for which the licence, permit, pass or authorization was granted ceases to exist;
- (c) in the event of any breach by the holder of such licence, permit, pass or authorization or by his servant or by any one acting with his express or implied permission on his behalf of any of the terms or conditions of such licence, permit, pass or authorization or of any licence, permit, pass or authorization previously held by the holder;
- d) if the holder thereof or any person in the employ of such holder or any person acting with his express or implied permission on his behalf is convicted of any offence under this Act or if the holder of the licence, permit, pass or authorization is convicted of any cognizable and non-bailable offence or 1[of any offence under the Dangerous Drugs Act, 1930 (II of 1930) or under the Drugs Act, 1940 (XXIII of 1940) or under the Bombay Drugs (Control) Act, 1952] (Bom.XXIX of 1952), or under the Indian Merchandise Marks Act, 1889,(IV of 1889) or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, or of any offence punishable under Article 8 of the Schedule to section 167 of the Sea Customs Act, 1878; (VIII of 1878);
- [(e) if the licence, permit, pass or authorization has been obtained through wilful misrepresentation or fraud.]

(2) Where a licence, permit, pass or authorization held by any person is cancelled, under subsection (7), the authority aforesaid may cancel any other licence, permit, or pass or authorization granted or deemed to have been granted to such person under this Act.

[(3) Notwithstanding anything contained in this section, the State Government may, for reasons to be recorded in writing, suspend or cancel any licence, permit, pass or authorization.]

55. Holder of Licence, etc. not entitled to compensation or refund of fee for cancellation or suspension thereof -- No holder of a licence, permit, pass or authorization shall be entitled to any compensation for the cancellation or suspension of the licence, permit, pass or authorization under Section 54 nor to a refund of any fee or deposit made in respect thereof.

56. Cancellation for other reasons (1) Whenever the authority granting a [licence, permit, pass or authorization] considers that it should be cancelled for any cause other than those specified in section 54, he may cancel it] either-

(a) on the expiration of not less than fifteen days" notice in writing of his intention to do so; or

[(b) Forthwith without notice, recording his reasons in writing for doing so.]

[(2) Where a licence, permit, pass or authorization is cancelled under sub-section

(1), a part of the fee for the licence, permit, pass or authorization proportionate to the unexpired portion of the term thereof and the deposit made by the holder thereof in respect of such licence, permit, pass or authorization shall be refunded to him after deducting any amount due from him to the State Government.] "

These provisions need appreciation along with the other Section i.e. Section 139(1)(a) and (n) of the Act which read as under -

"139. General powers of [State] Government in respect of licences, etc. - (1) Notwithstanding anything contained in this Act or the rules made thereunder, the [State] Government may, by general or special order, -

(a) prohibit the grant of any kind of licences, permits, passes or authorizations throughout the [State] or in any area;

(b)

(c)

(n) issue any other instructions in any matter pertaining to the grant or otherwise of licences, permits, passes or authorizations under this Act, as the [State] government may deem proper."

48. Arrangement of these provisions speaks for itself. Section 54 envisages situation which force suspension or cancellation in circumstances brought about due to default on the part of either the holder or grantee enjoying the privilege or created due to no fault of the grantor State. The only obligation upon State is to record the reasons in writing. Section 54(3) is again a superimposing provision which empowers the State to cancel or suspend. This subsection does not stipulate the contingencies in which it can be resorted to. But this scheme shows the absolute power reposed in the grantor State by the legislature. As power is to be exercised by the State in situation for which it can not be held responsible, therefore only, under S. 55. such a holder is denied any refund or compensation. This unfettered supremacy of the State is reaffirmed by Section 56 which allows it to suspend or cancel in its absolute discretion and subject to previous notice, if the situation to be addressed so permits. Only right made available to the holder is to seek proportionate refund for the unexpired period of the privilege. Debate whether contingencies spoken of in Section 54(1) cast any shadow on non-obstante provisions in S. 54(3) need not detain us in this matter. S. 56 is expressly enacted to meet the causes remaining unprovided for in Section 54 i.e. Section 54(1) as also Section 54 (3).

49. In the face of all these provisions having wide application, Legislature has still in chapter XI titled "Miscellaneous" placed Section 139 again enumerating the general powers of the State Government qua such licenses etc. This Section again opens with words "notwithstanding" and thus make it prevail over the entire Act and the Rules. It therefore overrides Section 54, Section 56 as also Section 11. Under Sub-section (1)(a) in exercise of such an overriding power, the State has been given power to issue general or special orders prohibiting the

grant of any kind of licenses, permits, passes, authorisations etc. throughout the State or in any specified area. Sub-section (1)(n) is a residuary power and it enables the State to issue such instructions having bearing on the subject of licenses etc. as it may find necessary. Subsection (2) reveals that if any instruction or order under Subsection (1) is general in nature, it is to be published in the Official Gazette.

Thus sub-section (1)(a) empowers the State to issue either a general or special order prohibiting the grant of any license etc. in any particular area. This power is distinct than the power u/s. 54 or Section 56. Only current licenses, permits, passes, authorisations etc. legally in force can be suspended or canceled by the State or its delegate under Sections 54 or 56. A power or authority which has expired or ceased, can not be either suspended or canceled. The question of its re-issue or rejuvenation is not within the scope of either Sections 54 or 56. As against this, Section 139(1)(a) operates at very threshold and strikes at the root. Once the decision in the shape of general or special orders not to issue any kind of licenses, permits, passes, authorisations etc. throughout the State or in any specified area, is issued, it is apparent that no such instrument can be issued to anybody for that area. This may enable the State to put ceiling on number of certain type of such licenses, permits, passes, authorizations etc. throughout the State or in any specified area. But then when a policy decision to prohibit the "trade" itself in any particular area is taken, all the existing licenses, permits, passes, authorizations etc. operating therein die. The purpose for which they were issued is no longer available and hence, all these instruments expire. This contingency is covered by Section 54(1)(b). In any case, a consequential direction bringing an end to all such licenses, permits, passes, authorizations etc. can be issued under Section 139(1)(n) also.

50. When all these provisions are seen together, we find a legislative design inherent in it which on account of the pernicious nature of trade puts all controls in the hands of State Government. Object behind vesting such wide powers in State is to put beyond any doubt its absolute supremacy. The fields covered may overlap, but this maximum latitude is given to the State to further that which is found in public interest. Once the commodity itself is made unreachable and not worth trading, it follows that all licenses, permits, passes, authorizations etc. in force authorizing any kind of deal in relation to it, are automatically rendered meaningless and expire. Hence, after ban or prohibition is imposed, it is not necessary to expressly direct the Collector or any other authority to proceed to cancel those instruments. Here the direction as issued is by way of abundant precaution and to enable the office of Collectors and others to arrange to take the unsold or left over stocks in to their custody.

51. The deliberate arrangement of various provisions by the State Legislature in the Prohibition Act is largely oriented to cater to the public interest and not with a view to enable the holders or grantees in this case, to point out any procedural lacunae or defects. It is obviously with the intention to put everything beyond

doubt and to demonstrate absolute and unquestionable supreme status or power of the privilege-owner State Government, where ever public interest is involved. We, therefore, do not find any substance in the challenge to the direction to cancel the licenses, permits, passes, authorizations etc. in this matter. As the utility of these instruments was over, they got terminated automatically. Here it can be beneficially noted that the State Government and Collector may also exercise the powers u/s. 54 and 56 of the Act. The Hon. Apex Court in *Ishwar Singh v. State of Rajasthan*, , (2005) 2 SCC 334, in paragraph 8 onwards has pointed out that a delegation of power does not imply parting with authority by the delegator. The delegating body will retain not only power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except insofar as it may already have become bound by an act of its delegate.

52. Quasi-legislative power under Section 139 (1)(a) to choose an area in which the licenses, permits, passes, authorizations etc. will not be issued; left with State Government has also been assailed before us. We find the challenge no more res-integra in view of the judgment of the Division Bench of this Court in LPA in case of *S.M. Mallewar* (supra) upholding the judgment of learned Single Judge in case of *S.M. Mallewar* (supra). Section 11 or 11A of the Prohibition Act along with other provisions and Article 47 of the Constitution of India contain sufficient norms to guide the State in the matter. The public interest and desire has been made supreme. Even at grass root level, the willing Gram Panchayat of any political party can force prohibition by following S. 11A of the Prohibition Act. We have dealt with scope of powers and correct interpretation of Section 139(1) (a) and (n), Section 54, Section 56 and Section 11 of Act. In any case, once the authority is conferred by the State Legislature, it follows that all incidental and ancillary powers to make it effective must be read into it. The Hon"ble Apex Court in *Khargram Panchayat Samiti v. State of W.B.*, , (1987) 3 SCC 82, observes that:--

"4. In our judgment, the view taken by the High Court that although the Panchayat Samiti was vested with the power to grant a licence for the holding of a hat or fair under Section 117 of the Act, yet it had no consequential or incidental power to specify a day for holding of such hat or fair, is manifestly erroneous and cannot be supported. It failed to appreciate that under the Act the power of general administration of the local area vests in the Panchayat Samiti only to grant a licence to hold a hat or fair under Section 117 of the Act, but such power of general administration necessarily carries with it the power to supervise, control and manage such hat or fair within its territorial jurisdiction. The conferment of the power to grant a licence for the holding of a h at or fair under Section 117 of the Act includes the power to make incidental or consequential orders for specification of a d ay on which such hat or fair shall be held. The decision of the High Court runs counter to the well accepted principles. It overlooks that the statutory bodies like the Panchayat Samiti enjoy a wide "incidental power" i.e. they may do everything which is "calculated to facilitate,

or is conducive or incidental to, the discharge of any of their functions" and the doctrine of ultra vires is not to be applied narrowly. It is well accepted that the conferral of statutory powers on these local authorities must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. See: De Smith's Judicial Review of Administrative Action, 4th Edn., p. 95, HWR Wade's Administrative Law, 5th Edn., p. 217, Craies on Statute Law, 6th Edn., p. 276, Attorney-General v. Great Eastern Railway, Baroness Wenlock v. River Dee Co. De Smith in his celebrated work Judicial Review of Administrative Action, 4th Edn. at p. 95 puts the law tersely in these words:

"The House of Lords has laid down the principle that whatever may fairly be regarded as incidental to, or consequent upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires."

This principle was enunciated by Lord Selborne in Attorney-General v. Great Eastern Railway in these words:

"The doctrine of ultra vires ought to be reasonably, and not unreasonably, understood and applied and whatever may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires."

These words have been quoted by Professor Wade in this monumental work Administrative Law, 5th Edn. at p. 217 and also by Craies on Statute Law, 6th Edn. at p. 276. Craies also refers to the observations of Lord Watson in Baroness Wenlock v. River Dee Co. to the effect:

"Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions."

5. This Court in V.T. Khanzode v. Reserve Bank of India has followed the dictum of Lord Selborne in Great Eastern Railway case and reaffirmed the principle that the doctrine of ultra vires in relation to the powers of a statutory corporation have to be understood reasonably, and so understood, whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires. It had earlier been laid down by a Constitution Bench in the case of State of U.P. v. Batuk Deo Pati Tripathi that a power to do a thing necessarily carries -----

mere maintenance of sanitation, health and hygiene as held by the High Court."

This concept is reiterated and used in , (2004) 3 SCC 640-Commercial Tax Officers and Otrs. v. Swastik Roadways and Anthr. in paragraph 11. Presuming that the situation calls for reading of such powers, we find that this principle of interpretation has to apply with more vigour here, as more liberal interpretative approach is called for keeping in mind the object of Maharashtra Prohibition Act, 1949, wide field covered by its Sections 54, 56 and 139(1)(a) and (n) and Article 47 of the Constitution.

53. Coming to the arguments of the petitioners on promissory estoppel or legitimate expectation, it is seen that the Collector while exercising the powers of renewal of license/s grants a fresh one on every occasion. License is parting of its privileges by the State and is subject to its absolute right to recall or cancel it for such reasons as it finds fit. It is the subjective satisfaction of the State. This Court can look into only relevance of such material and not its sufficiency. Demand by women, electoral promise, similar demand by considerable number of gram panchayats or no opposition by majority in public hearing, all constitute such relevant material. In Delhi Development Authority v. Durga Chand Kaushish, , (1973) 2 SCC 825, Hon''ble Apex Court was examining the renewal clause in a contract in pure civil matter and it observes that renewal of a lease is really the grant of a fresh lease. It is called a "renewal" simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease. In an activity otherwise prohibited and permitted strictly as per license/s, it is obvious that no question of promissory estoppel can apply. Full Bench of the Andhra Pradesh High Court in paragraph 64 of its judgment in case of Kanaka Durga Wines v. Government of Andhra Pradesh reported at , 1995 Law Suit (AP) 183 points out that equitable doctrine of legitimate expectation is not attracted when the claim runs against the public policy or contrary to the provisions of a Statute. In facts before it as the ban was found relatable to a Statute and Article 47, the Andhra Pradesh High Court turned down the contention. Here also, when concession of enjoying privileges allowed in Chandrapur is statutorily withdrawn and it is made a dry district, terms and conditions of the license itself, put an end to it. Permitting the licenses to operate will be contrary to the scheme of Prohibition Act as also unconstitutional. Thus there is no scope to invoke such expectation or estoppel in present facts.

54. For same reasons, there is no requirement of compliance with the principles of natural justice. This Court in , 2013 (1) Mah.L.J. 461 - Dhariwal Industries Limited and anr. v. State of Maharashtra and others, has observed in para 49 that --

"49-Merely because the Food Safety Commissioner's order is not required to be laid before Parliament or State Legislature, it does not mean that Parliament did not require the Food Safety Commissioner exercise any quasi legislative power. As already discussed earlier, the obligation of food business operator under

section 26(2)(i) not to manufacture or sale any food which is unsafe, without any declaration by the Central Government, Food Authority or the State Government under section 26(2)(iv), would be meaningless, if the Food Safety Commissioner does not have any power to issue a quasi legislative order under section 30(2)(a) of the Food Safety Act, 2006. Hence, the question of the Food Safety Commissioner following the principles of natural justice before issuing such order under section 30(2)(a) does not arise."

Orders of this Court dated 13.8.2015 in case of M/s. Nestle -WP 1688 of 2015 at Bombay also highlight this aspect in para 82 and 83. We therefore find that insistence of Petitioners on extending them the opportunity of hearing before taking the decision to reinstate prohibition or reliance on the principles of promissory estoppel is erroneous and misconceived. None of their vested rights is taken away by the impugned measures.

55. The Division Bench of the Madras High Court in *Parambikulam Aliyar Project Original Ayacutdars Assn. v. State of T.N.* - , (1994) 2 LW 232 has held that it is humanly impossible to extend the ayacut overnight or in a few months by making an election promise and trying to fulfill the same. It finds that the longstanding need of the drought stricken area is satisfied by the passing of the legislation after the announcement of the election. The Division Bench uses the well-known Sanskrit saying "Kakayhaliya Nyaya" to appreciate this event. The withdrawal of concession or recalling the parting of its privilege by the State of Maharashtra in Chandrapur is an exercise of the conditional legislation and even if motive might have been to secure the more votes, no malice can be attributed here. In present facts the election promise is by the then elected MLA who in 2010, did introduce a private bill and who now is a Minister of a political party in power. His party had lost the State assembly elections in 2009-2010 when he introduced the private bill. The measure is being enforced by the then opponent political fraction which has defeated the then ruling party. It is important to note that the said or earlier ruling party also had not opposed the demand to declare Chandrapur a dry district. But its Minister then gave a positive assurance on the floor of the house in 2010. This demand of the common man as perceived by all the political parties and leaders had traveled beyond the bounds of politics. On "Estoppel", this Madras Division Bench holds that it is not available against the Legislature. On facts before it, the Madras High Court finds that equity, if any, in favour of petitioners before it must yield to the greater equity necessitated by the larger public interest. It finds that even the executive government would not be barred by the principle of estoppel from implementing the new water distribution policy. This logic also clinches the controversy before us.

56. To conclude with, from the survey of provisions of Maharashtra Prohibition Act, 1949, it allows us to reach to the conclusion that there exists policy of prohibition in the State and it is relaxed to certain parts of the State under the authorisation from the State Government by issuing appropriate licences. As the policy of the State about prohibition is in consonance with the dictum of Directive

Principles of Constitution of India, we see no reason to interfere with the same and we uphold the action of State in declaring Chandrapur district as Dry District. Petitions dismissed.