

---

**(2006) 05 UK CK 0031**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 290 of 2006 (M/B)**

Ramesh Lal Shah and Others

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

---

**Date of Decision : 23-05-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 19(1), 19(6), 301  
Uttar Pradesh Excise Act, 1910 — Section 40  
Uttaranchal Excise (Settlement of Licenses for Retail Sale of Country Liquor) Rules,  
2001 — Rule 8, 9

**Citation : (2006) 3 UC 1387**

**Hon'ble Judges : Rajeev Gupta, C.J.; M.M. Ghildiyal, J**

**Bench : Division Bench**

**Advocate : M.L. Verma and D.C.S. Rawat, for the Appellant; U.K. Uniyal, A.A.G.,  
for the Respondent**

---

## **Judgement**

Rajeev Gupta, C.J.—This judgment shall govern the disposal of Writ Petition No. 292 of 2006 (M/B), Writ Petition No. 293 of 2006 (M/B), Writ Petition No. 295 of 2006 (M/B), Writ Petition No. 306 of 2006 (M/B), Writ Petition No. 307 of 2006 (M/B), Writ Petition No. 363 of 2006 (M/B), Writ Petition No. 327 of 2006 (M/B), Writ Petition No. 427 of 2006 (M/B), Writ Petition No. 428 of 2006 (M/B), Writ Petition No. 429 of 2006 (M/B), Writ Petition No. 430 of 2006 (M/B), Writ Petition No. 431 of 2006 (M/B), Writ Petition No. 432 of 2006 (M/B), Writ Petition No. 433 of 2006 (M/B), Writ Petition No. 435 of 2006 (M/B), Writ Petition No. 436 of 2006 (M/B), Writ Petition No. 437 of 2006 (M/B), Writ Petition No. 438 of 2006 (M/B), Writ Petition No. 439 of 2006 (M/B), Writ Petition No. 440 of 2006 (M/B), Writ Petition No. 441 of 2006 (M/B), Writ Petition No. 442 of 2006 (M/B) and Writ Petition No. 443 of 2006 (M/B) also.

2. The matter relates to settlement of licenses for retail shops of foreign liquor and country liquor in the State of Uttaranchal for the Excise Year 2006-07.

3. The Petitioners in these writ petitions are the Applicants for the licenses for

country liquor shops / foreign liquor shops. The Petitioners' case is that in response to the Advertisement dated 06-03-2006 inviting applications, the Petitioners submitted their applications with the requisite information and the bank drafts for the requisite amount well before the last date. On 18-03-2006, Secretary, Excise Department, State of Uttaranchal issued an order directing that the applications having bank drafts issued before 04-03-2006 shall stand rejected. By this order, such Applicants were granted further time for submitting fresh applications with bank drafts issued after 04-03-2006. On 21-03-2006, another order was issued by Secretary, Excise Department, State of Uttaranchal reiterating that the applications with bank drafts issued before 04-03-2006 shall stand rejected and withdrawing that part of the order of 18-03-2006 which permitted the Applicants to apply afresh with fresh bank drafts issued after 04-03-2006. By impugning the orders dated 18-03-2006 and 21-03-2006, the Petitioners in these writ petitions are seeking quashing of these orders on the grounds that these orders are irrational and arbitrary and also bad in law, as the action of the State Government in rejecting the Petitioners' applications on the ground that the bank drafts with these applications were issued before 04-03-2006 amounts to changing the rules of the game after the game had begun. The Petitioners, therefore, have claimed that the orders dated 18-03-2006 and 21-03-2006 are violative of Article 14 of the Constitution of India and are, therefore, liable to be quashed.

4. The Respondents have filed their detailed counter affidavit in Writ Petition No. 290 of 2006 (M/B) and have adopted the same in all other writ petitions.

5. The Respondents, in their counter affidavit, have pleaded that no citizen has a fundamental right to trade in liquor. The Respondents have sought to justify their action of rejecting the applications having bank drafts issued before 04-03-2006 on the plea that with a view to maintain transparency in the settlement process and to remove the doubts reflected through media, it was found necessary to reject those applications which are submitted with the bank drafts issued before 04-03-2006 i.e. before the announcement of the Excise Policy for the year 2006-07. The Respondents have further stated that on a thorough scrutiny of the 81,000 plus applications, the State Government found sufficient material to infer that 23,000 plus applications rejected vide orders dated 18-03-2006 and 21-03-2006 were at the behest of some Cartel, which was trying to monopolise the liquor trade in the State of Uttaranchal. Countering the Petitioners' averments in the writ petition, the Respondents have contended that the State Government has not acted arbitrarily in rejecting the applications having bank drafts issued prior to 04-03-2006, as the said decision was taken with a view to protect the interest of the State and the bonafide residents of the State of Uttaranchal. The Respondents' further stand is that the above policy decision of the State Government cannot be found fault with by the Court merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical.

6. On the pleadings of the parties, following questions arise for our consideration:

I. Whether a citizen has a fundamental right to trade in liquor?

II. Whether the action of the State Government in rejecting the Petitioners' applications on the ground that the bank drafts with these applications were issued prior to 04-03-2006 amounts to changing the rules of the game after the game had begun?

III. Whether the order dated 18-03-2006, rejecting the Petitioners' applications solely on the ground that the bank drafts with these applications were issued prior to 04-03-2006, is arbitrary?

IV. Whether the order dated 21-03-2006, withdrawing the opportunity granted to the Petitioners vide order dated 18-03-2006, is unreasonable and arbitrary?

V. Whether the orders dated 18-03-2006 and 21-03-2006, rejecting the Petitioners' applications on the ground that the bank drafts with these applications were issued prior to 04-03-2006, are violative of Article 14 of the Constitution of India and as such, liable to be quashed?

7. We have heard Mr. M.L. Verma, Senior Counsel assisted by Mr. D.C.S. Rawat; Mr. Altaf Ahmed, Senior Counsel assisted by Mr. H.S. Rawal; Mr. V.K. Tankha, Senior Counsel assisted by Mr. Paresh Tripathi; Mr. Sudhanshu Dhulia, Senior Counsel assisted by Ms. Puja Banga; Mr. S.N. Babulkar, Senior Counsel with Mr. Hirendra Singh; Mr. Ajay Singh Bisht; Mr. S.S. Chauhan; Mr. V.B.S. Negi; Mr. H.V. Shah; Mr. Mohd. Azim; Ms. Shiwali Joshi; Mr. K.N. Joshi; Mr. N.S. Kanyal; Mr. Jagdish Bisht; Mr. P.C. Bisht; Mr. B.P.S. Mer; Mr. B.M. Pingal; Mr. C.K. Sharma; Mr. Deepak Sharma; Mr. Kuldeep Singh Rawal and Mr. Vinod Tewari, Advocates for the Petitioners and Mr. U.K. Uniyal, Addl. Advocate General; Mr. Nanak Chand Gupta and Mr. Subhash Upadhyaya, Standing Counsel for the Respondents.

I. Whether a citizen has a fundamental right to trade in liquor?

8. Part III of the Constitution of India guarantees fundamental rights to every citizen. Article 19(1)(g) of the Constitution of India guarantees fundamental right to practice any profession or to carry on any occupation, trade or business. But the same is not always true about liquor trade. Though it is not the Petitioners' case that they have a fundamental right to trade in liquor, the Respondents have categorically stated in their counter affidavit that as no citizen has a fundamental right to trade in liquor, the action of the State Government cannot be challenged on the ground that the same is violative of Article 14 of the Constitution of India.

9. The Apex Court, while considering this aspect of the matter in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , observed 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.

10. In the case of *Doongaji and Co. Vs. State of Madhya Pradesh and others*, , the Apex Court held in paras 15 and 16 as under:

15. It is settled law by several decisions of this Court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power, has power to prohibit absolutely any form of activity in relation to an intoxicant, its manufacture, possession, import and export. No one can claim, as against the State, the right to carry on trade or business in any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of Article 14. Vide *Har Shankar v. Dy. Excise and Taxation Commissioner and State of M.P. v. Nandlal Jaiswal*.

16. When the State was dealing with the grant of the privilege of establishing or manufacturing intoxicants, rectified spirit or denatured spirit, spirit (country made liquor) in a distillery owned or regulated by it and invites tenders in this regard it should conform to the rigour of Article 14 of the Constitution....

11. The same view was again reiterated by the Apex Court in the case of *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, , wherein it was observed in para 60:

60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in Clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by Clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination

of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(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.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.

12. From the above-quoted dicta of the Apex Court in the cases of Nandlal Jaiswal, Doongaji and Co. (I) and Khoday Distilleries Ltd., it emerges out that no citizen has a fundamental right to trade in liquor and the State, while retaining the right and privilege to trade in liquor to itself, does not violate any of the

fundamental rights of a citizen. Nevertheless, when the State decides to part with its privilege to trade in liquor, then the action of the State must conform to Article 14 of the Constitution of India, meaning thereby that the action of the State while sharing its privilege with others is liable to be quashed, if the same is violative of Article 14 of the Constitution of India.

II. Whether the action of the State Government in rejecting the Petitioners' applications on the ground that the bank drafts with these applications were issued prior to 04-03-2006 amounts to changing the rules of the game after the game had begun?

13. The Petitioners' submission is that as neither the Rules framed by the State of Uttaranchal nor the Advertisement dated 06-03-2006 inviting applications for the licenses for the Excise Year 2006-07 prescribed that the bank drafts to be submitted with the applications should be of 04-03-2006 or a date thereafter, the rejection of the Petitioners' applications by the Respondents on the ground that the bank drafts with their applications were issued prior to 04-03-2006 amounts to changing the rules of the game after the game had begun. The learned Counsel for the Petitioners, placing reliance on the dicta of the Apex Court in the cases of *Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others*, *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others*, and *Crag Martin Distillery Pvt. Ltd. Vs. Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd.*, submitted that the course adopted by the State Government was not legally permissible.

14. The Respondents, on the other hand, have sought to justify the rejection of the Petitioners' applications on the ground that Excise Policy for the year 2006-07 was announced on 04-03-2006 and as most of the bank drafts submitted with the 23,000 plus applications were at the behest of some Cartel, the State has acted to protect the interest of the State and the bonafide citizens of the State. The learned Addl. Advocate General, therefore, submitted that the action of the State Government in prescribing 04-03-2006 as the cut-off date for the bank drafts is only a guideline for proper implementation of the Excise Policy for the year 2006-07 and does not amount to changing the rules of the game.

15. The State of Uttaranchal for regulating the settlement of licenses for liquor shops framed Rules known as Uttaranchal Excise (Settlement of Licenses for Retail Shops of Foreign Liquor and Beer) Rules, 2001 and Uttaranchal Excise (Settlement of Licenses for Retail Sale of Country Liquor) Rules, 2001, These Rules have been framed u/s 40 of the U.P. Excise Act, 1910 as applicable In the State of Uttaranchal, Rule 8 of the aforesaid Rules prescribes the eligibility conditions for Applicants for license of the retail shops of foreign liquor, whereas Rule 9 prescribes the eligibility conditions for Applicants for license of the retail shops of country liquor.

16. Rule 8 of the aforesaid Rules prescribes the following eligibility conditions:

Applicants for license of the retail shop must fulfill the following conditions

namely:

(a) Be a citizen of India and permanent resident of Uttaranchal as defined by State Government from time to time.

Garhwal and Kumaon Manclal Vikas Nigams, Purva Sainik Kalyan Udhyam Ltd. and Registered Cooperative Societies of Ex-Army personnel may also apply for retail shops.

However, private individuals shall be allowed to take only one shop (either Country liquor or Foreign liquor) in one District.

(b) Be above 21 years of age.

(c) Not be a defaulter / blacklisted or debarred from holding an excise license under the provisions of any Rules made under the Act.

(d) Submit an affidavit duly verified by Public Notary as a proof of the following, namely:

(i) That he possesses or has an arrangement for taking on rent a suitable premises in that locality for opening the shop in accordance with the provisions of "Uttar Pradesh Number and Location of Excise Shop Rules, 1968" as amended from time to time.

(ii) That his proposed premises of the shop has not been constructed in violation of any law or rules.

(iii) That he and his family members possess good moral character and have no criminal background and have not been convicted of any offence punishable under "United Provinces Excise Act, 1910" or "Narcotics Drugs and Psychotropic Substances Act, 1985" or of any law for the time being in force, or any other cognizable and non bailable offence.

(iv) That in case he is selected as licensee, he will within thirty days of grant of license furnish a certificate issued by the Collector of the District of which he is the resident, showing that he as well as his family members possess good moral character and have no criminal background or criminal record.

(v) That he shall not employ any sales man or representative who has criminal background as mentioned in Clause (iii) or which suffers from infectious or contagious disease or is below 21 years of age or a woman.

(vi) That he is not in arrears of any public dues or Government dues.

(vii) That he shall not sublet or transfer the license to others during the period of validity of license.

(e) He will furnish a bank draft drawn in favour of the Excise Commissioner or the District Excise Officer issued from a scheduled bank or Uttaranchal State Co-operative Banks and District Co-operative Bank as earnest money. The amount of

earnest money shall be 10% of the license fee or as fixed by the Excise Commissioner from time to time. In case, the Applicant is selected as licensee, the earnest money shall be adjusted against the license fee. In other cases,, it shall be returned as such to the Applicant as soon as selection process is over. The licensee shall have to deposit a solvency certificate of value prescribed by the Excise Commissioner as per directions of the State Government, before the Licensing Authority within three months from the date of allotment of the shop. The licensee-shall also have to deposit a character certificate issued by the Collector of his District, before the Licensing Authority within thirty days from the date of allotment of the shop.

17. The eligibility conditions for the license for country liquor shops prescribed in Rule 9 are verbatim the same.

18. Though Rules 8(e) and 9(e) prescribe that the Applicant will furnish a bank draft in favour of the Excise Commissioner or the District Excise Officer issued from a Scheduled Bank or Uttaranchal State Cooperative Bank and District Cooperative Bank as earnest money, these Rules do not prescribe that the bank draft accompanying the application should be of a date after the announcement of the Excise Policy of the relevant Excise Year.

19. The State Government vide Notification No. 370/XX3/06/115/2005 dated 06-03-2006 issued Excise Policy for the year 2006-07. The Excise Commissioner vide its order dated 06-03-2006 determined the slabs of license fee for the country and foreign liquor retail shops for the Excise Year 2006-07 specifying an increase of 15% in the license fee of 2005-06 Excise Year. On 08-03-2006, the Excise Commissioner, State of Uttaranchal issued a general direction to all the District Magistrates of the State regarding settlement of country and foreign liquor shops for the Excise Year 2006-07 specifying that the Applicants shall have to deposit 10% of the annual license fee in the form of a bank draft issued by a Nationalised or Scheduled Bank in the office of the District Excise Officer along with application and affidavit. The Advertisement inviting applications for the Excise Year 2006-07 though contemplated that 10% of the annual license fee is to be deposited by the Applicant in the form of a bank draft issued by a Nationalised or Scheduled Bank, the same does not prescribe that the bank draft should be of the date after the announcement of the Excise Policy for the year 2006-07.

20. The Apex Court in the case of Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others, , while considering the alteration of the conditions of tender after the last date of the submission of the tender, observed in paras 5 and 7:

5. It is thus clear that the entire procedure followed by the Commissioner and the Government of Assam in accepting the tender of Dutta Associates (Appellant herein) is unfair and opposed to the norms which the Government should follow in such matters, viz., openness, transparency and fair dealing. The Grounds 1

and 2, which we have indicated hereinabove, are more fundamental than the third ground upon which the High Court has allowed the writ appeal.

7. In the circumstances, we affirm the judgment of the Division Bench in writ appeal on the grounds stated above and direct that fresh tenders may be floated in the light of the observations made in this judgment. We reiterate that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be transparent, fair and open. While a bona fide error or error of judgment would not certainly matter, any abuse of power for extraneous reasons, it is obvious, would expose the authorities concerned, whether it is the Minister for Excise or the Commissioner of Excise, to appropriate penalties at the hands of the courts, following the law laid down by this Court in *Shiv Sagar Tiwari v. Union of India* In re Capt. Satish Sharma and Sheila Kaul.

21. In the case of *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others*, , in somewhat similar circumstances the Apex Court observed in paras 10, 11 and 12:

10. There have been several decisions rendered by this Court on the question of tendered process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus:

(i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest.

(ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate.

(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.

11. Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

12. If we bear these principles in mind, the High Court is justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to Clause 6(a) of the Tender Notice but the same was deleted subsequent to the last date of acceptance of the tenders. If that is so, the arguments advanced on behalf of Konark Infrastructure (P) Ltd. in regard to the allegation of mala fides of the Commissioner of the Municipal Corporation in showing special favour to Monarch Infrastructure (P) Ltd. or the

other contentions raised in the High Court and reiterated before us are insignificant because the High Court had set aside the award made in favour of Monarch Infrastructure (P) Ltd. The only question therefore remaining is whether any contract should have been awarded in favour of Konark Infrastructure (P) Ltd. The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had begun And therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is justified because by reason of deletion of a particular condition a wider net will be permissible and a larger participation or more attractive bids could be offered.

22. The Apex Court in the case of Crag Martin Distillery Pvt. Ltd. Vs. Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd., , while considering the course permissible to the Government or Municipal Corporation when the terms of the tender were altered after the players entered into the arena, observed in paras 9 and 10:

9. We have heard the learned Counsel for the parties and it appears to us that without going into any other question, this is a case where, as observed by this Court in Dutta Associates Pvt. Ltd. Vs. Indo Merchants Pvt. Ltd. and Others, , the rules of the game have been changed after the game has started. It may have been possible for the Respondent to have incorporated in the notice dated 7th February, 2000 that one of the terms of registration would be that the minimum price would have to be Rs. 235/- per case in order to be eligible to be considered for being placed on the rate contract. This is subject to and without prejudice to the contention of the Appellants that fixing such a floor price would, on the facts of the present cases, be violative of Articles 301 and 303 of the Constitution, a question which does not arise for consideration in these cases as it has not been so raised before the High Court,, What is contended is that the condition of a floor price of Rs. 235/- not being there in the said notice of 7th February 2000, the said condition could not be imposed subsequently.

10. In our opinion the said contention merits acceptance. A somewhat similar question had arisen before this Court in the aforesaid case of Dutta Associates and applying the ratio of the said decision it would clearly appear that a new condition has been inserted after the last date of submitting the quotations and no opportunity has been granted to the Applicants like the Appellants to apply afresh. If the Respondent had thought it necessary to have a floor price and as a result thereof had issued the notice dated 29th March, 2000, then in all fairness suppliers should have had an opportunity of submitting their offers afresh keeping in view the revised norms / guidelines. Had this condition of the floor price of Rs. 235/- been there in the initial notice of 7th February, 2000, it is possible that the Appellants may have given a quotation in respect of their cheaper brand at the price of Rs. 235/- or more. Not being aware that such a

condition would be imposed, the Appellants offered to supply that particular brand at Rs. 215/- per case. The effect of imposing the said condition by notice dated 29th March, 2000 is to make the Appellants ineligible for even being considered for being put on the rate contract qua that brand. This is the Yule of the game which was changed which is impermissible.

23. Thus, neither Rule 8 or Rule 9 of the Rules nor the Advertisement inviting applications for the Excise Year 2006-07 required the Applicants to submit bank drafts with their applications issued by the banks on or after 04-03-2006. The action of the Respondents in prescribing 04-03-2006 as the cut-off date for the bank drafts and in rejecting the Petitioners' applications on the ground that the bank drafts submitted with their applications were issued before 04-03-2006, in view of the above quoted dicta of the Apex Court, amounts to changing the rules of the game after the game had begun and as such, is not permissible.

III. Whether the order dated 18-03-2006, rejecting the Petitioners applications solely on the ground that the bank drafts with these applications were issued prior to 04-03-2006, Is arbitrary?

24. The learned Counsel for the Petitioners submitted that the order dated 18-03-2006, stipulating the rejection of the Petitioners' applications solely on the ground that the bank drafts with these applications were issued before 04-03-2006, suffers from the vice of being arbitrary. The learned Counsel submitted that the Respondent State has not suffered any loss on account of the bank drafts accompanying the Petitioners' applications being of the date / dates prior to 04-03-2006, as the validity period of a bank draft is of six months and during the validity period, the bank drafts are like valid currency. It was further, submitted that the cut-off date of 04-03-2006 has no nexus with the Respondents' unfounded apprehension about a Cartel operating in the liquor business in the State of Uttaranchal, The learned Counsel, therefore, submitted that the order dated 18-03-2006 is not only arbitrary, but Irrational too.

25. Mr. U.K. Uniyal, the learned Addl. Advocate General, supporting the order dated 18-03-2006, contended that in excise matters the Government has full freedom to change its policy, terms of tender and other conditions at its sweet will and the same is not open to challenge.

26. The Apex Court, while examining as to whether the action of the Government was arbitrary in the case of Bannari Amman Sugars Ltd. v. Commercial Tax Officer and Ors. reported in (2005) 1 SCC 625, observed in para 9:

9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is

fairness in action by the State and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

27. While considering as to whether prescribing 04-03-2006 as the cutoff date for the bank drafts, the State has changed the rules of the game after the game had begun, we have seen that neither the Rules nor the Advertisement contemplated submission of the bank drafts of a particular date much less of a date after the announcement of the Excise Policy for the year 2006-07. We have held that the above act of the Respondents amounted to changing the rules of the game after the game had begun and as such, was not legally permissible. We do not find any nexus between the act of the Respondents in prescribing 04-03-2006 as the cut-off date for the bank drafts and the alleged apprehension of the Respondents that a Cartel is operating in the liquor business in the State of Uttaranchal. The mere fact that the number of the applications for the Excise Year 2006-07 was 81,000 plus in comparison to 56,000 plus for the Excise Year 2005-06 would not necessarily lead to the inference that a Cartel Is operating in the liquor business in the State of Uttaranchal.

28. Therefore, we hold that the order dated 18-03-2006, rejecting the Petitioners' applications solely on the ground that the bank drafts with these applications were issued before 04-03-2006, is arbitrary.

IV. Whether the order dated 21-03-2006, withdrawing the opportunity granted to the Petitioners vide order dated 18-03-2006, is unreasonable and arbitrary?

29. The learned Counsel for the Petitioners submitted that though the order dated 18-03-2006 rejecting the Petitioners' applications was arbitrary and irrational, the Respondents, in their wisdom, thought it proper to grant further opportunity to those Applicants for submitting fresh applications with bank drafts issued after 04-03-2006. The learned Counsel submitted that the Respondents, acting further arbitrarily, passed the order dated 21-03-2006 withdrawing the said opportunity granted to the Petitioners vide order dated 18-03-2006 and as such, the order dated 21-03-2006 is bad in law.

30. Mr. U.K. Uniyal, the learned Addl. Advocate General, while defending the order dated 21-03-2006, submitted that though in the order dated 18-03-2006 opportunity to submit fresh applications with fresh bank drafts was granted to those Applicants whose applications were rejected, on a second thought, the Respondents found the grant of such opportunity quite unnecessary and

therefore, the same was withdrawn vide order dated 21-03-2006. The learned Addl. Advocate General further submitted that the order dated 21-03-2006 is neither unreasonable nor arbitrary, as the authority who is competent to grant opportunity is equally competent to recall the same.

31. In view of the above finding holding that the rejection of the Petitioners' applications on the ground of the bank drafts with these applications being of the date prior to 04-03-2006 amounted to changing the rules of the game after the game had begun and as such, not legally permissible, we need not dilate much on this question. Suffice it to say that when the initial rejection of the applications, itself, was not permissible, the Petitioners were not at all required to submit fresh applications.

32. From the foregoing discussion, it emerges out that:

- (i) No citizen has a fundamental right to trade in liquor;
- (ii) If the State decides to share its right and privilege to trade in liquor with others, it's action must be in accordance with Article 14 of the Constitution of India;
- (iii) Neither Rule 8 nor Rule 9 of the Rules prescribing eligibility conditions nor the Advertisement contemplated submission of a bank draft of a particular date much less of a date after 04-03-2006;
- (iv) The act of the Respondents in prescribing 04-03-2006 as the cut-off date for the bank drafts amounted to changing the rules of the game after the game had begun;
- (v) The rejection of the Petitioners' applications on the ground that the bank drafts; with their applications were issued before 04-03-2006 is arbitrary.

V. Whether the orders dated 18-03-2006 and 21-03-2006, rejecting the Petitioners' applications on the ground that the bank drafts with these applications were issued prior to 04-03-2006, are violative of Article 14 of the Constitution of India and as such, liable to be quashed?

33. The inevitable consequence of the above conclusions is that the orders dated 18-03-2006 and 21-03-2006, rejecting the Petitioners' applications on the ground that the bank drafts with their applications were issued prior to 04-03-2006 are violative of Article 14 of the Constitution of India and as such, are liable to be quashed.

34. Writ Petition No. 290 of 2006 (M/B), Writ Petition No. 292 of 2006 (M/B), Writ Petition No. 293 of 2006 (M/B), Writ Petition No. 295 of 2006 (M/B), Writ Petition No. 306 of 2006 (M/B), Writ Petition No. 307 of 2006 (M/B), Writ Petition No. 363 of 2006 (M/B), Writ Petition No. 327 of 2006 (M/B), Writ Petition No. 427 of 2006 (M/B), Writ Petition No. 428 of 2006 (M/B), Writ Petition No. 429 of 2006 (M/B), Writ Petition No. 430 of 2006 (M/B), Writ Petition No. 431 of 2006 (M/B), Writ Petition No. 432 of 2006 (M/B), Writ Petition No. 433 of 2006 (M/B),

Writ Petition No. 435 of 2006 (M/B), Writ Petition No. 436 of 2006 (M/B), Writ Petition No. 437 of 2006 (M/B), Writ Petition No. 438 of 2006 (M/B), Writ Petition No. 439 of 2006 (M/B), Writ Petition No. 440 of 2006 (M/B), Writ Petition No. 441 of 2006 (M/B), Writ Petition No. 442 of 2006 (M/B) and Writ Petition No. 443 of 2006 (M/B) are, therefore, allowed and the impugned orders dated 18-03-2006 and 21-03-2006 are, hereby, quashed.

35. While quashing the impugned orders dated 18-03-2006 and 21-03-2006, we leave it open to the Respondents to:

- i. either proceed further for the settlement of excise licenses for the foreign liquor shops and the country liquor shops for the Excise Year 2006-07 by drawing lots from the applications received by them; or
- ii. initiate the entire process afresh.

36. No order as to costs.