(1996) 12 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8597 of 1996

Rattan Singh Kishore Chand & Co. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 17-12-1996

Acts Referred:

Citation : (1998) 1 RCR(Civil) 448

Hon'ble Judges : M.S.Liberhan, J and Sat Pal, J

Advocate : Mr. Rakesh Aggarwal, Advocates., Mr. Mohan Jain, Advocates for appearing Parties

Judgement

M.S. Liberhan, J.

1. This judgment will dispose of civil writ petition Nos. 8597, 8803, 8822, 9016, 9149, 9175, 9326, 9564, 9632, 10892, 10893 and 13370 of 1996 involving common core of questions primarily on the same facts.

2. Broadly the relevant and necessary prefatory facts run thus :

Licences for a fixed period i.e. 1 year to 2 years for running the liquor vends in the State of Haryana were granted by holding open auction on the premises of licensees. Licences for the hoteliers to run Bars, for brewers and distillers to brew and distil were granted subject to the terms and conditions provided in the licences.

3. Assembly elections were held in the State of Haryana in April 1996. The Haryana Vikas Party whose election manifesto was total prohibition in the State, formed the Government with the alliance of Bharatiya Janata Party. The State Assembly Session ended on 29.5.1996 and Ordinance No. 1 of 1996 dated 30.5.1996 was published in the official gazette of 1996 whereby the Punjab Excise Act (hereinafter referred to as the ''Act'') was amended.

4. The Government of Haryana took a decision on 31.5.1996 to introduce prohibition in the State with effect from 1.7.1996. Resultantly, import or export,

manufacture, sale, purchase, consumption and possession of any intoxicant was prohibited with effect from 1.7.1996 vide notification dated 1.6.1996 issued by the Governor of Haryana in exercise of powers under Sections 17, 20, 24 and 26 of the Act as well as in exercise of all other enabling powers of the Governor. Exceptions, for possession, consumption and purchase by military personnel in the notified areas or by foreign nationals or Indians returning from abroad or to the other persons on medical grounds to be certified by the specified civil surgeons and excise officers, were imbibed in the notification of prohibition. Licences and permits for wholesale and retail of denatured spirit, rectified spirit, absolute alcohol for educational institutions or industries etc. or for medical or toilet preprations, ware houses or for sale to Army and paramilitary personnel, distillery licences for rectified and denatured spirits for use for not potable purposes and for export outside the State were provided. Brewery licences to manufacture for export from State of Haryana after 30.6.1996 till the expiry of licences was allowed.

5. Petitioners under the Act as amended were served cyclostyled notices dated 1.6.1996 thereby cancelling vends licences, bar licences etc. Similar notices to clear the stock, prohibiting sale of liquor in the State of Haryana with effect from 1.7.1996, stopping manufacture from the date their licences expire, were served upon the brewers and distillers.

6. Petitioners challenged the issuance of Ordinance, the Punjab Excise Act, as amended, notices cancelling their licences and introduction of prohibition. In substance, the principal grounds of challenge or the figuratively claim made by the petitioners in the factual context are mostly alike. All cardinal questions involved or raised by the petitioners who can be categorised in three groups viz. (a) licences of vends (b) licences of bars in hotels and (c) breweries or distillers. The relevant grounds put by the three groups of petitioners are not only pari materia with each other but also overlapped each others. In spite of difference of wordings in the grounds of challenge, there is no material difference. Thus, the petitioners formulated their contentions thus :

i) Petitioners having changed their position to their disadvantage on the representation and assurances of the respondents by investing in their respective ventures i.e. deploying of labour, taking premises on hire etc. The respondents are, therefore, estopped by their act and conduct on the principle of estoppel or equitable estoppel to cancel the licences midterm or service of notices cancelling the licences or intimating the licensees that it would not be renewed;

ii) The amendment of the Punjab Excise Act, 1914 as well as the notification introducing prohibition suffers from malice inasmuch as no reason has been disclosed necessitating the issuance of notification and Ordinance particularly when the Chief Minister of Haryana State announced the introduction of prohibition with effect from 1.7.1996, yet no bill was introduced in the Assembly Session which ended just before the issuance of notification. There was no emergent situation which envisaged the issuance of aforesaid notification;

iii) The deletion of provision for payment of compensation in violation of the terms of licences or contracts, while withdrawing the licences is unreasonable being violative of the subsisting contract. The binding auction conditions and contractual conditions could not be changed under any circumstances. Thus the provisions of the amended Act, the notification introducing prohibition as well as the notices served are violative of Article 14 of the Constitution of India;

iv) The impugned notices withdrawing or cancelling the licences or intimating that it would not be renewed after their expiry or changing the terms of auction or contractual conditions or otherwise suffers from vice of violation of principles of natural justice as no opportunity of hearing was granted before acting their issuance or which in result has affected the interests of the petitioners adversely;

v) The introduction of prohibition is against the interest of the State as it would result in loosening the State revenue which would hamper the State exchequer;

vi) The withdrawal of licences enmass as a public policy is violative of Section 41 of the Act, its objects and purposes;

vii) Prohibition cannot be introduced through issuance of a notification by the Secretary or in exercise of powers of a delegated Legislation;

viii) Licences to manufacture/distil/brew having been granted by the Union of India and State, the State alone cannot ban the manufacture of liquor etc., interalia, contending that since the State cannot establish a distillery or brewery after passing of the Industrial Regulation Development Act, 1951, so the State cannot deestablish the same. It was further contended that the Central Act would prevail over those of State rendering the later Act as void;

ix) The State cannot ban the export even to the foreign countries by stopping the manufacturing as it amounted to entrenching upon the field of Central Legislation which is the power of Parliament;

x) As the prohibition resulted in laying off the number of employees including rendering the people connected with the trade as jobless, it suffers from the vice of violation of Article 21 of the Constitution of India which amounts to interference in the right of livelihood;

xi) The decision to impose prohibition is arbitrary being violative of Article 14 of the Constitution inasmuch as right to impose is not justiciable. Thus the decision to impose total prohibition and the manner of introduction of prohibition is excessive, arbitrary, capricious and violates Article 14 of the Constitution;

xii) The notices issued are in violation of Article 47 of the Constitution as they do not serve any public purpose particularly when the same would adversely affect the agricultural activities especially activities especially when manufacture of alcohol is done for the purpose of export. Thus, the impugned notification and notices suffer from the vice of violation of Articles 301 and 304 of the Constitution having been issued without application of mind; and

xiii) Since the renewal of licence is a procedural formality, the respondents cannot order refusal of renewal without any fault committed by the licensees

7. As a necessary consequence to the impugning of prohibition, petitioners sought the relief of quashing of the imposition of prohibition and quashing of notices issued to them.

8. The respondents refuted the submissions made. It was argued that right to trade or do business in liquor, as has been established by various pronouncements of Hon''ble the Supreme Court, being neither a legal right nor a fundamental right, the State is not only within its jurisdiction to put restraint on the intoxicants but can totally prohibit its sale, purchase and manufacture etc. A legislation cannot be challenged on the ground of mala fide, for a legislative act no principles of natural justice are required to be complied with. If we may hasten to add, it was contended that life of an ordinance is only for six months or till the Session is called, whichever is earlier. Consequently, the same cannot be impugned. It was urged that neither the ordinance nor the notification have been issued mala fide nor it is a colourable exercise of legislative functions. Mala fide, in fact was denied. It is urged that it is the State''s duty to implement directive principles of the Constitution in discharge of which prohibition has been introduced, to achieve the object of Article 47 of the Constitution. It is further to put an end to the social evil which is injurious to health and is a requirement for improvement of social, economic and other conditions of the people of the State. The notices served on the licensees are in accordance with the Act. It was urged that no assurances were held by the State, as stated by the petitioners either at the time of auction of vends or at the time of issuance of licences under various categories. Licences were issued according to the law prevailing and are being either cancelled or withdrawn or refused renewal in accordance with the law prevailing.

9. To get to the core of controversy, we may venture to notice some or certain features of the scheme of the Act as well as the statutory provisions ordained by the State for the management of sale, manufacture etc. of intoxicants/liquor. The basic design appears to be, that State would grant licences to the licensees to deal with State''s privilege for sale, purchase, manufacture and consumption of liquor to individuals, firms, companies etc. yet keep its control with itself. Chapter II of the Act provides for establishment, control, superintendence of excise administration. Reference may be made to Section 8, which vested power of superintendence and administration of all matters relating to excise in the Financial Commissioner and other Officers in the hierarchy of the excise department or State executive. The State can delegate its powers under the Act, under the enabling subSections of subSection 13 of the Act except the powers conferred by Sections 14, 21, 22, 31, 56 and 58 of the Act. Statutory appeals or revision against the orders have been provided. Chapter III has been imbibed with the provisions for import, export, transport of intoxicants, including the powers vested in the State for prohibiting the said acts. Specific reference may

be made to Sections 16 and 17 of the Act which run thus :

"16. Import, export and transport of intoxicants : No intoxicant shall be imported, exported or transported except :

(a) after payment of any duty to which it may be liable under this Act, or execution of a bond, for such payment, and

(b) in compliance with such conditions as the State Government may impose.

17. Powers of State Government to prohibit import, export and transport of intoxicants : The State Government may by notification.

(a) prohibit the import or export of any intoxicant into or from Punjab (Haryana) or any part thereof; or

(b) prohibit the transport of any intoxicant.

The mechanism to terms ''manufacture, possession and sale'' has been provided by Chapter IV of the Act. It specifically prohibits the manufacture of intoxicants except when permitted under the Act. If we may hasten to add, specific reference be made to Section 21 which is reproduced in verbatim hereunder :

"21. Establishment or licensing of distilleries and breweries : The Financial Commissioner, subject to such restrictions or conditions as the State Government may impose, may

(a) establish a distillery in which spirit may be manufactured under a licence granted under section 20;

(b) discontinue any distillery so established;

(c) licence the construction and working of distillery or brewery;

(d) make rules regarding :

(1) The granting of licences for distilleries, stills or breweries;

(2) the security to be deposited by the licensee of a distillery or brewery;

(3) the period for which the licence shall be granted;

(4) the inspection and examination of such distillery or brewery and the warehouse connected therewith and of the spirit or fermented liquor made and stored therein;

(5) the management and working of the distillery or brewery;

(6) the form of accounts to be maintained and the returns to be submitted by the licensee;

(7) the upkeep of buildings and plant;

(8) the size and description of stills, and other plant;

(9) the manufacture, storing and passing out of spirit, and the contents of passes;

(10) the prices to be charged by the licensee;

(11) any other matters connected with the working of distilleries or breweries;"

It would be reasonable to infer from reading of Sections 24 to 30 of the Act that one can possess liquor permissible under the Act and rules at a specified place provided in the licence to possess. It prohibits the manufacture of liquor or its sale except in terms of the permission granted under the licence. It is the State Government which can prohibit the possession or sale etc. by a notification. It could be sold only under the authority of the State and subject to the conditions or terms prescribed by the State. It is the privilege of the State to lease out or part with its rights to manufacture, sale and supply etc. within a specified area. However, the Act specifically debar the sale and delivery of liquor to the persons under the age of 25 years. The quintessence to issue the licences and permits etc. is provided by Chapter VI. If we may add, Section 36 of the Act empowers the State Government or the Licence Issuing Authority to cancel or suspend the licence. At this stage, it would be expedient to notice the specific provisions of Sections 36 and 41 of the Act, in order to enable us to answer the points raised and dealt with in the later part of the judgment. Section 36 and 41 of the Act, run thus :

"36. Power to cancel or suspend licences etc. : Subject to such restrictions as the State Government may prescribe, the authority, granting any licence, permit or pass under this Act may cancel or suspend it :

(a) if it is transferred or sublet by the holder thereof, without the permission of said authority; or

(b) if any duty or fee payable by the holder thereof be not duly paid; or

(c) In the event of any breach by the holder of such licence, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass; or

(d) if the holder thereof is convicted of an offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and nonbailable offence or of any offence punishable under the Dangerous Drugs Act, 1930 or, under the Merchandise Marks Act, 1889, or of any offence punishable under Sections 482 to 489 (both inclusive) of the Indian Penal Code; or

(e) if the holder thereof is punished for any offence referred to in clause (8) of Section 167 of the Sea Customs Act, 1878; or

(f) where a licence, permit or pass has been granted on the application of the grantee of lease under this Act, on the requisition in writing of such of grantee; or

(g) at will, if the conditions of the licence or permit provided for such cancellation or suspension".

"41. Powers to withdraw licences : (1) Whenever the authority which granted a licence, permit or pass under this Act considers that such licence permit or pass should be withdrawn for any cause other than those specified in section 36, it may, on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days, withdraw the licence either :

(a) on the expiration of fifteen days'' notice in writing of its intention to do so, or

(b) forthwith without notice.

(2) Compensation in the case of withdrawal : If any licence, permit or pass be withdrawn under clause (b) of subsection (1), in addition to the sum remitted as aforesaid, there shall be paid to the licensee such further sum (if any) by way of compensation as the Financial Commissioner may direct.

(3) Refund of fee deposit : When a licence, permit or pass is withdrawn under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, after deducting the amount (if any) due to the State Government."

Under the Act, authorities are not only authorised to recover the licence fee in spite of its having been cancelled for specified reasons but also debars the holder of licence to recover the damages or compensation payable on account of having been suffered because of suspension or cancellation of licence. Reference be made to Sections 37 to 39 of the Act. The Act specifically provides that renewal of the licence would not be claimed much less as of right. Section 43 reads as under :

"43. No claim to consequence of refusal to renew a licence etc. : No person to whom a licence, permit or pass may have been granted shall be entitled to claim any renewal thereof, and no claim shall lie for damages or otherwise in consequence of any refusal to renew a licence, permit or pass on the expiry of the period for which it remains in force."

There is no gain saying that the provisions with respect to suit for damages etc. under the then Act has been deleted.

10. In conformity with the basic design, objects and scheme of the principal Act, the amendment brought about in the statutory provisions for bringing out changes by amending the Principal Act for expediency, be noticed. Prior to amendment, Section 26 of the Act provided for the sale of the intoxicants by amending the heading of the Section and providing subsection 5 to Section 26, the State Government has been empowered upon being necessary or expedient to prohibit the sale, purchase or consumption of the intoxicants or alternatively to restrict it. The only change brought about in Section 41 of the Act is to the effect that the provision relating to amount remitted, required to be refunded as

compensation on cancellation of the licence has been deleted. The amendment resulted in effect debarring the licensee to claim compensation on cancellation of the licence. Section 57 of the amended Act, debars suits or proceedings for damages because of the withdrawal of the licence.

11. The basic design of the amended Act as plainly understood from the amended provisions is to authorise the State to prohibit the sale, purchase and consumption of intoxicants upon the State being specific of its expediency and necessity. It further debars suit or other proceedings for damages suffered on account of cancellation or withdrawal of the licences.

12. Learned counsel for the petitioners basically founded their claim on the principle of estoppel or equitable estoppel. Undisputedly, the relevant facts to the issue illusively summarised and plainly understood during the course of arguments, from various writ petitions, written statements run thus :

13. Licences for liquor vends were auctioned for the year 199697 in an open auction. Similarly bar licences on fixed fee were issued in terms of the excise policy of 1992 whereby the same could be granted only to three stars hotels. It is the Union of India who provided parameters for declaring the hotels as three stars hotels. Licences to brew or distill were issued to the breweries or distilleries etc. by the State. All licences were granted subject to the terms of auction and terms of licences, of course, subject to the Act and Rules framed thereunder and the orders issued. Licences for bars, industries, breweries or distilleries were renewable on their expiry. It was contended that in view of the past consistent conduct of the State with respect to renewing of all licences in the ordinary course of business, on their expiry, the petitioners justly assumed as just expectation that renewal is implicit in the licence or it may be termed that renewal was implied subject to the conditions of auction, Act and rules etc. applicable at the time of renewal. The conditions of auction were binding on the contracting parties. Licences could be cancelled solely on violation of conditions of the contract, Act or Rules. The petitionerslicensees claim that they altered their position to their detriment by relying upon the conduct of the State, representing impliedly or expressly, in view of the above facts. Petitioners in consideration of their just expectation given rise to by the conduct of the State, made huge investments for upgrading their hotels to three stars, according to the parameters fixed by the Union of India. They imported the basic or capital goods under the export policy, subject to earning foreign exchange and complying with the other conditions of import under the scheme. They also took loans from financial institutions. Thus, as a necessary corollary, assuming the renewal of the licences, which used to be automatic, the petitioners acquired a basic right for renewal the licences which is a property and the same cannot be taken away by any repealing legislation. It was urged that machinery and investments would go waste as the same cannot be used for any other purpose. It would be a national loss. The prohibition introduced, thus, would render the contract initiated with foreign funds incapable, or of nonperformance. It further

makes the petitioners liable for penal clauses/circumstances under the Foreign Exchange Regulation Act, 1992. The State cannot wriggle out of its contractual obligations even by exercising the legislative authority. As a necessary corollary, the State is estopped from turning round and stopping the sale, purchase, consumption, export and import of intoxicants and thus further estopped from introducing the prohibition.

14. Learned counsel for the petitioners relied on Sham Lal etc. v. State of Punjab etc., AIR 1976 S.C. 2045 to support the proposition that auction conditions are final. We find no such proposition laid down by the Hon''ble Supreme Court. In the context of the facts and circumstances of the case, the Hon''ble Supreme Court was called upon to consider and determine the points in the factual context unlike the present one, whether the authorities should have cancelled the licence on default committed for payment of the instalment of the licence fee. Secondly, whether making of supply of liquor conditional on payment of proportional amount of licence fee amounted to breach of condition of the contract. It was in this context, that it was observed while refusing to exercise the writ jurisdiction that the licensee was liable to pay the licence fee for which he has bidden at the auction. It nowhere lays down that auction conditions are in perpetuity or cannot be changed or amended even in exercise of legislative powers by the State or by the authority in accordance with the statute.

15. So far reliance placed on State of Haryana and others v. Jage Ram, AIR 1980 S.C. 2018, cited by learned counsel for the petitioners also nowhere lays down any such proposition for which the petitioners sought support as referred to above. Rather it affirms the observations made in Sham Lal''s case (supra) to the effect that licensee cannot invoke the discretionary jurisdiction to avoid contractual obligation. The observations made by Hon''ble the Supreme Court in the judgment reported as State of Punjab and others v. Ajudhia Nath and another, AIR 1981 S.C. 1374 run thus :

"The demand for the shortfall in stillhead duty is based on the terms of the binding contract and that it sought to enforce the liabilities arising out of mutually agreed conditions of auction. Such a demand, in the opinion of this Court, could not be equated with a notice requiring the liquor vendor to show cause why his licence should not be cancelled."

16. Secondly it was found that in case of payment of licence fee no principle of natural justice needs be observed. In our considered view, the authority does not support the contention of the petitioners in respect of any of the grounds put forth to invoke the principle of estoppel or equitable estoppel. The reliance placed on Musa Ji Lukmanji v. Durga Dass, AIR (33) 1946 Lahore 57 by the learned counsel for the petitioners is unfounded inasmuch as it only decided that contract ousting jurisdiction of one of the two courts is valid and binding on the Court. There is no such proposition or question involved in the case in hand.

17. Similarly in State of Punjab and others v. Raghunath Dass, AIR 1963 Punjab

76, the Division Bench took the view that licence for a liquor vend is granted in exercise of police (policy ?) powers of the State. Licence is subject to obligation under the Act though it was observed that licensee does acquire a right. This is a proposition which runs contrary to the principle settled by Hon''ble the Supreme Court in catena of authorities to the effect that to trade or do business in liquor is neither any legal right nor a fundamental right. Reference may be made to Khoday Distilleries v. State of Karnataka, JT 1995(1) RRR 209 and State of Andhra Pradesh and others etc. v. McDowell and Co. and others etc., J.T. 1996(3) S.C. 679. Thus, in our considered view, the petitioners do not derive any support for any of the propositions as referred to above and canvassed during the course of arguments to invoke the principle of estoppel or equitable estoppel.

18. Even on facts it would be expedient to notice in verbatim the relevant conditions of auction, which run as under :

"All licences whether for wholesale or for retail sale of country spirit, foreign liquor, beer and Bhang shall be granted subject to the provisions of the Punjab Excise Act (Act No. 1 of 1914) and the rules framed thereunder from time to time as applicable to the State of Haryana. Clause 40 provides that in case of a vend or groups of vends are closed by the Govt. on its own without option of opening a vend at an alternative site for reasons other than those contained in Section 41 of the Act, the licence fee shall be refunded within 30 days without interest and from 31st day interest shall be payable. These provisions have further been amended by a notification issued to the effect that in case of a vend being closed for any reason, without any option of opening a vend at an alternative site, the licensee would not be entitled to any compensation or damages because of closing of the vend."

We may hasten to add that Section 26 of the Act, as amended ordained the State by empowering, to prohibit the sale, purchase or consumption of intoxicants, upon it being considered necessary or expedient.

19. At this stage, we may notice the principles culled out from catena of decisions or judgments as it emerged i.e. to the effect that neither a person has absolute right to trade or do business in liquor nor it is a fundamental right and because of public morality, the harmful and dangerous character of liquor, the State possesses the complete right of control over all aspects of it, i.e. manufacture, auction, sale and consumption vests in the State. In fact this rule of law has got imbibed from the binding precedents of Hon''ble the Supreme Court. Reference can be made to Khoday Distilleries v. State of Karnataka, J.T. 1994(6) S.C. 588, which has taken notice of all the judgments till then. In view of the state of law referred above, we may hasten to add that licence which has been termed as privilege of the State given to a person to do a particular act, cannot be termed as a property whether tangible or nontangible.

20. In the factual context, the petitioner took various licences subject to the Act and rules which categorically provided the State with power to withdraw a licence

without any cause. Renewal of the licence could not be claimed as specifically provided by Section 43 of the Act. Thus the licensees with full knowledge of the terms and conditions of the licences, which even otherwise every citizen is presumed to know law, attached to the licences took them at this stage, the licensees cannot wriggle out of the express conditions of the licences. If we may say so, once the licences were obtained with full knowledge of the petitioner in expectation of profit which on ground realities might have backfired, cannot plead estoppel as bar for cancellation of the licences. It may be observed that it is well established rule of law that authorities can neither acquire nor extend more jurisdiction or power by any representation or conduct beyond that the Statute has fixed or conferred expressly. As a necessary corollary one can say, the public authority cannot be estopped from exercising the authority or power which vested in it either on the ground of or simply having not used it in the past or that it has acquiesced in its breach. Neither the public interest can be defeated on the principle of estoppel nor any public authority has any power or jurisdiction to deny or refuse to or dispense with his jurisdiction to discharge or to enforce his statutory duty by his own conduct or mistakes. One cannot be discharged from or estopped from or fetter one''s authority for discharging one''s statutory, legislative or constitutional functions either by express or implied contract or on account of a particular conduct or representation which may be the premises or base for other person to conduct its affairs adversely, to his own interest. There can be no estoppel against the change of public policy or the Legislature to legislate prospectively or retrospectively irrespective of the fact that a citizen or a person may suffer loss on account of being a victim of change, as the State being guardian of law, consequently can be let off as a free agent to either waive off the statutory duty or bind itself to a particular situation or to immobilize its authority by its conduct or assurance. One cannot lose sight of the fact that in the exercise of legislative functions, a person''s loadstar or guiding principle is the public interest. Reference may be made to 1977(2) All England Law Reports 182, 1981(2) All England Law Reports 227, 1972(3) All England Law Reports 232 and 1961(2) All England Law Reports 46.

21. From the totality of the undisputed facts stated above, we may venture to sate rather it is categorically discernible that there was neither any assurance from the State with respect to the renewal of the licences nor there was any contemplation that the licences would be allowed to run their full term. The Constitution of India vide Article 47 ordained to achieve prohibition as one of the objects for governance which the people of India gave to themselves. Neither the State nor any other authority by any amount of conduct could otiose Article 47 of the Constitution. Petitioners''submission that they have invested their lives'' earnings relying on the express and implied past conduct of the State or national property i.e. plants etc. would go waste which may be a national loss or it would render the petitioners for penal consequences for either noncompliance or making it impossible for compliance of their obligation undertaken or the changing scenario of conventional moralities and relevance of Article 47 in the

present age howsoever may appear to be primafacie attractive contentions or an emotional ploy, but it cannot hold field in view of the law laid down in M/s Khoday Distilleries Ltd. case (supra) Mc.Dowell & Co.''s case (supra).

22. At this stage, we may venture to notice the law stemmed from decision of Hon''ble the Supreme Court in the judgment reported in M/s Khoday Distilleries'' case. The Hon''ble Supreme Court while dealing with the challenge to Warehouse Amendment Rules 1989 (Excise, Manufacture of Wine from Grapes) 1993 and Indian and Foreign liquor rules and while considering the question whether a person has a fundamental right to carry the trade/business in liquor and whether the State can prevent the petitioners from carrying on the business of liquor as a part from trade, during the unexpired period of licences and whether restriction can be placed only by the act of legislature or by subordinate legislature as well, has observed :

i) Total prohibition is a reasoned restriction and cannot be termed unreasonable in the interest of public convenience i.e. whether it is conducive to public convenience or not, is a matter entirely for the authorities to judge and not for the Courts to substitute its opinion with that of the authorities;

ii) Neither one has inherent right to settlement of liquor shop nor a person has absolute right to sell liquor. The purpose of excise laws is to control or restrict the consumption of liquor and such control or restriction being obviously necessary for the preservance of public health, moralsand to raise the revenue;

iii) The Hon''ble Supreme Court while dealing with the relevant provisions of Section 43 of the Bengal Excise Act, which empowers the Licensing Authority to withdraw licence without any reason whatsoever, and the provisions of Sections 41 and 43 of the Punjab Excise Act, as amended by the Haryana Act, observed after laying down the law to the effect that a citizen has no fundamental right to carry the trade or business of liquor, "Trade in liquor historically on different footing from others. Therefore restriction in other trades not permissible or permissible and reasonable so far as trade of liquor is concerned...... Restriction of prohibition is not only reasonable but also permissible because of public morality, interest, harmful and dangerous character of liquor..... State possesses the right of complete control over all aspects of intoxicants i.e. manufacture, collection, sale and consumption". It was further observed : ''Power to control is a question of society''s right to self protection and rest upon the right of the State to act for health, moral and welfare of the people.... Liquor traffic is a source of pauperism and crime''. In the same context and strain, it was observed, "State''s levelling taxes, fees etc. does not make a right to carry on the trade or business in liquor as a fundamental or even legal right, when such trade or business is completely prohibited."

Hon''ble the Supreme Court categorically and explicitedly held after referring to the Industrial Development Regulation Act, 1951 and Resolution 1956 of Industrial Policy, that "claim of exclusive jurisdiction of Parliament against the

State''s claim of monopoly with regard to production, manufacture and sale cannot be sustained". If we may hasten to add, it was observed while rejecting the contentions that ''till prohibition is introduced, a citizen has a fundamental right to carry business or trade in potable liquor, has no merit. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. It has been explicitedly and elucidely observed that ''what articles and goods should be allowed to be produced, possessed, sold and consumed is to be left to the judgment of the Legislative and the executive wisdom..... Merely because production and consumption of some harmful tobacco is not banned, that of alcohol which is proved to be harmful, should not be banned.

23. Similarly Resolution of 1956 of Industrial Policy does not and cannot have the effect of limiting the powers of the State to prohibit or restrict the production of potable alcohol, the resolution itself nowhere speaks against such prohibition or limitation. Licences to the breweries etc. are valid only so long their production, possession, transport, sale and consumption are not prohibited, in the State concerned.

Hon''ble the Supreme Court while answering the question whether the State can place restrictions and limitation under Article 19(6) of the Constitution of India, by the subordinate legislation found that, ''it can be imposed by the subordinate legislation so long it does not violate any provisions of the Constitution of India, as business in liquor is extra commercium and can be regulated and restricted even by the executive orders, provided issued by the Governor of the State''. It was found that when the Act terminated the said licence of the petitioners with effect from the appointed day the whole of trade or business of the petitioners for sale of liquor came to an end.

24. In McDowell & Co.''s case (supra) the Hon''ble Supreme Court while dealing with the Ordinance as well as the Andhra Pradesh Prohibition Act, 1995, though not congruent with the instant Ordinance for any common consideration yet being pari materia on material facts and aspects, if we may say so, in all essential aspects and in consonance with the ordinance and having common object viz. introduction of prohibition of consumption of liquor and matters connected and incidental thereto, to fulfil the object of Article 47, after reviewing the case law and conspectus of various decisions predominantly laid down that States are supreme in making laws within the sphere allotted to them by the Constitution. After referring to listII entries 8, 6, 24, 51 and 33 it was held that the power to make law with regard to production, manufacture, sale and consumption as well as possession of intoxicating liquor vest in the State. Declaration under the Industrial Development Regulation Act, 1951 does not transplant or transfer entries of the State list to the Central one. Therefore, Parliament cannot take over the control of industries engaged in manufacture and production of intoxicating liquor. It was observed that ambit and scope of constitutional entry cannot be determined with reference to a Parliamentary

enactment. It reaffirms the principle that to trade or business in intoxicants is neither a legal right nor a fundamental right. The observations made in verbatim run thus :

"There is no fundamental right to do trade or business in intoxicants. The State under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants its manufacture, storage, export, sale and possession...... No person has absolute right to deal in liquor and all forms of dealing in liquor have from their inherent nature been treated as a class by themselves by all civilised communities".

The Hon''ble Supreme Court relying in Khoday Distilleries'' case (supra) referred to above concluded :

"that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquor is considered to be res extra commercium (outside commerce)....... For the same reason, the Bench held, the State can create a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Further it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise."

It was finally observed by Hon''ble the Supreme Court :

"Imposing prohibition is to achieve the directive principle adumbrated in Article 47. Such a course merits to be treated as a reasonable restriction within the meaning of Clause (6) of Article 19."

25. While examining the provision of prohibition its pith and substance in the realm of arbitrariness or violation of Article 14 of the Constitution of India, the Hon''ble Supreme Court observed that "a law made by the Parliament or the Legislature can be struck down by Courts on two grounds alone viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other Constitutional provision. There is no third ground".

The Hon''ble Supreme Court refused to go into the concept of procedural unreasonableness by observing :

"We do not wish to enter into the discussion of the concepts of procedural unreasonableness and substantive unreasonableness concepts inspired by the decisions of the United States Supreme Court. The concept of substantive due process has proved to be an unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the Courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable..... An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz. (i) unreasonableness which can more appropriately be called irrationality, (ii) illegality, and (iii) procedural impropriety."

Hon''ble the Supreme Court observed with respect to the test for finding out the provision to be violative of Article 14 to the effect :

"When a statute is impugned under Article 14 what the Court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis".

Hon''ble the Supreme Court, in spite of the fact of keeping the question of violation of Article 14 of the Constitution of India, with regard to delegated legislation categorically observed :

"Learned counsel for the petitioners then sought to demonstrate the discriminatory aspect of the impugned amending Act in prohibiting the production and manufacture of intoxicating liquors in Andhra Pradesh and importing the requirements of State (to meet the need of exempted categories) from outside the State. We are unable to see any reasonableness in it much less any discrimination..... The exempted categories put together constitute a fraction of the total consuming population of Andhra Pradesh. If production and manufacture of intoxicating liquors is permitted in the name of meeting the needs of this miniscule population, it would give rise to several other problems in turn."

The Hon''ble Supreme Court approved the prohibition of production and manufacturing of intoxicating liquors.

26. In view of the observations made above and the law laid down by Hon''ble the Supreme Court, referred to above, one can say that licences were in fact to carry on the business under the State authority subject to public control. In fact in real sense, it can be said that a licensee works as an agent of the State. It was the privilege of the State which the licensees in respective fields were permitted to operate subject to the conditions and control as licensees of the State. It cannot be said that the principal cannot withdraw the agency or revocate the licence particularly when the ''licence'' as understood in the trade as well as in the legal terminology is a permission to do a particular act by the licensor to the licensee who is otherwise not entitled to it as of a legal right. It cannot be said that the principal or the licensor cannot revoke the agency or licence or denude the licensee or the agent of its authority on the principle of estoppel or equitable estoppel. Unless, if we may hasten to add, a licence is irrevocable, protected or permitted by any statute, a right to revoke a licence is inherent in the licence itself.

27. The petitioners accepted the licence or permission granted by the State to act as licensees or as agent subject to the complete control of the State, with an express or implied condition that a licence can be withdrawn at any time before the expiry of the period of licence in spite of the same being for a fixed period, with a specific statutory provision that a licensee much less any other person would not be entitled to claim any renewal thereof, nor they would be entitled to for any damage suffered by them as a consequence of refusal to renew the licence on the expiry of the period for which it remained in force. Reference may be made to Section 43 of the Act. In spite of the above conditions and statutory provisions, the petitioners having made investment, cannot be permitted to turn round and claim that the licence cannot be revoked whether on the principle of ''just expectation'' or on the principle of ''equitable estoppel'' or of their being rendered liable for any civil or criminal liability under some other act or contracts which they entered into in anticipation of the continuity of the licence in spite of the statutory provisions. There is no doubt that the Courts are bound to take a rational view of the State''s obligations to individuals, the latter''s right to property as well as the fact that meaning of the Constitution being not a static thing buried within orders under Court''s opinion from time to time, yet solely on the ground of resultant effect of the law or the decision of the State being severe or harsh, a court cannot substitute its wisdom for that of the legislature in spite of the frailties and blemishes of the legislative policies or decisions. The appeal against harshness stringency if any of law does not lie to a Court of law. These are to be made within their constitutional jurisdiction. It is the Legislature which is in a better situation to judge the need of the society and individuals who are not shackled by the conventional moralities which go on changing with time and need of the society.

28. There can be no two opinions that there can be any estoppel against the legislation or authority exercising the statutory authority. The respondents, in exercise of their legislative powers as well as statutory powers (amended and

unamended) have decided to cancel the licences and in fact cancelled the same and introduced prohibition. The consumption of alcohol has been considered against public morality on account of its evil effects on the society at large, its effect in crime, its danger to community, the activity being condemned from ancient times. To discourage loss of the hard earned income by undiscerning and improvident conduct of the poor people deviling in the consumption of alcohol with its consequences on the family peace being the avowed object especially when it forms an odd object of the directive principles or the objects by which the people gave themselves to be governed, the petitioners'' claim especially against the State when they are discharging their constitutional functions or obligation cannot be sustained. No policy or statutory provisions or any act or conduct on the part of State ordinarily would stop it to discharge its constitutional obligations much less a contract of licence upon which the entire claim of the petitioners is based. Interest of an individual cannot be preferred to that of the Society as a whole. Individual interest has to give way to the interest of the society. If we may hasten to add, there is no such principle in our law, nor any authority for the same has been cited, that there can be an estoppel against legislation for exercise of statutory powers or in the discharge of constitutional functions. No act of an individual or subordinate Officer can bar an authority or legislature from enforcing the statutory duties or discharging its constitutional functions.

29. In our considered view, no contract express or implied can be entered into debarring the legislation to enact laws and amend laws, affecting the contractual rights of the parties.

30. The challenge to Ordinance No. 1 of 1996 introducing amendment to the Punjab Excise Act does not suffer from the view of malice. Apart from the fact that the same cannot be challenged on the ground of mala fide particularly attributing a malice on the ground that there was no emergent situation which envisaged the issuance of the Ordinance with effect from 1.7.1996 when the Assembly session has only come to and end on 29.5.1996, when the Government formed, virtually sought the referendum for introducing the prohibition at the hustings. The question is not resintegra. We find support for our above observations from the law laid down by Hon''ble the Supreme Court in R.K. Garg v. Union of India, AIR 1981 S.C. 2138, M/s. S.K.G. Sugar Pvt. Ltd. v. State of Bihar and others, AIR 1974 S.C. 1533, and Lakhi Narayan Das and others v. The Province of Bihar, 1950 Federal Court 59.

31. The only requirement for issuance of the Ordinance is that Vidhan Sabha would not be in session. It has been observed that power or authority under Article 213 of the Constitution of India for issuance of a notification vesting in the Governor is in fact a Legislative power conferred on the Governor to legislate for an interim short period of six months or within six weeks of the session being called. Reference may be made to State of Punjab v. Satya Pal Dang and others, AIR 1969 S.C. 903. Thus the contention of the petitioners that the notification

suffers from malice cannot be sustained.

32. Sordid facts to challenge the notification or amendment or introduction of prohibition being violative of the terms of licence or contract or being unreasonable in view of the subsisting binding contract between then petitioners and the respondents or is being violative of Article 14 of the Constitution of India, cannot be sustained in view of the law laid down by Hon''ble the Supreme Court in McDowell & Co.''s case (supra).

33. As observed in the earlier part of the judgment to the effect that no irrevocable contract can be entered into by the State debarring itself from legislation. Contractual rights arise on account of contracts under laws, while the Legislation has been ordained by the Constitution, to enact laws. No authority can deny to discharge a duty ordained by the Constitution by any process or means express or implied. Solely, the legislative provisions being contradictory to a contract entered into or unreasonable of the subsisting contract or conditions thereunder or affecting the conditions by itself howsoever harsh the resultant effect may be, will not render the statute to be violative of Article 14 of the Constitution of India.

34. The contention of violation of principles of natural justice of audi alterm partem i.e. granting a hearing before acting and passing a legislation cannot be sustained. Neither we know of any law nor any has been cited at the Bar where it is a part of the principle of natural justice that power/authority legislating a legislation should grant a hearing because of its adverse affect on any contractual obligation between the State and its subjects, even on the sordid facts averred. Hearing was not required before intimation of withdrawing or cancelling the licences or intimating that it would not be renewed. The principle of natural justice does not envisage any hearing particularly when it is only an intimation of the provisions of the law. In our considered view, the enforcement of a statutory provision does not envisage any hearing particularly when there is no allegation or averments made that any provisions of the Act are being violated.

35. So far question of prohibition being against the interests of the State as it would result in loss of revenue to the State which would adversely affect the State exchequer is concerned, it is for the State or Legislature to consider. There is a presumption that ordinarily the authorities were well informed about the facts and it is after considering all aspects that the legislation introducing prohibition has been made. It is for the State to consider whether to permit manufacture of alcohol and under what terms and conditions. No mandate can be issued by the Court directing the State to grant its privilege to any individual or the petitioners either under the Constitution or under the statutory provisions.

36. The contention of the learned counsel for the petitioners that the licences were cancelled enmass as a public policy which is violative of Article 41 of the Constitution and its objects and purpose, it not tanable. Sympathy with the

petitioners would not entitle the Court to write their points of claim alleging species of hardship, contractual obligation, which conceivably may persuade the legislature to give a second thought. By now by plethora of judgments, it has been settled that introduction of prohibition including total prohibition is neither unreasonable nor violative of Articles 14 and 19 of the Constitution of India. Reference may be made to M/s Khoday Distilleries and McDowell & Co.''s cases (supra).

37. The contention that the prohibition cannot be introduced through issuance of a notification by the Secretary or in exercise of powers of delegated legislation it is a contention to be noted only and rejected, particularly when the notification has been issued by and in the name of the Governor. It has been only authenticated by the Secretary. It is not in exercise of delegated power of the legislation rather it is an authority of legislation itself.

38. The contention that since the distilleries or breweries are established under an indent issued by the Central Government in exercise of powers conferred by the Industrial Regulation Act, 1951, the State cannot undo the same, we cannot distinguish this contention of the petitioners either on facts or of law from the cases cited above, wherein it has been categorically held that import and export, legislating or managing the manufacture, sale or consumption etc. are within the wisdom of the State Legislation and does not entrench upon the field of Central Legislation. Consequently, it is within its jurisdiction to act.

39. Similarly, the contention of introduction of prohibition being violative of Article 14 of the Constitution of India, has been rejected by Hon''ble the Supreme Court. The resultant effect of some of the employees being rendered jobless cannot be permitted to denude the State from legislating or introducing prohibition, in the larger interest of the society. The citations referred to above of Hon''ble the Supreme Court concluded on all these issues against the petitioners. We would contend ourselves by stating that all the contentions raised and referred to in the earlier part of the judgment are virtually congruent with the contentions raised before Hon''ble the Supreme Court and rejected.

40. At this stage, it may be noticed that even learned counsel for the licensees or breweries/distilleries has categorically in the writ petitions as well as during the course of arguments conceded that imposition of prohibition is not arbitrary and they do not challenge efficacy or justiciability of the introduction of prohibition. The only ground of challenge put is the manner of its imposition and fixing the out off date being fixed arbitrarily. Even otherwise, the Hon''ble Supreme Court has observed in the judgments referred to above that the prohibition policy is not justiciable though the question whether manner of its imposition is subject to challenge was kept open. The introduction of prohibition in the phased manner or even total prohibition has been upheld and all the contentions raised herein before us are pari materia with the contentions raised before Hon''ble the Supreme Court, though the language of both the Acts is slightly different but there is no material difference and underlying principles and philosophy under

both the Acts are the same. The Hon''ble Supreme Court was called on to consider the very view points which have been submitted before us in the factual context, which is in no way unlike the present one.

41. By applying the principles laid down in the citations relied upon by the State, we are satisfied that neither the Ordinance nor the notices issued under the amended Act nor the issuance of notification introducing prohibition suffers from any vice of violation of the Constitution of India or the Act.

42. It would be wrong for us to pronounce upon what precisely the Hon''ble Supreme Court has already done. We would not and should not go behind the rules or the law laid down by Hon''ble Supreme Court in the context and facts of the case, which is squarely congruent with the facts and circumstances of the case in hand.

43. We are unable to comprehend the contention put forth by learned counsel for the petitioners that the impugned notices issued are in violation of Article 47 of the Constitution of India as they do not serve any public purpose. Prohibition by itself has been accepted as a public purpose, irrespective of the fact that any activity has been adversely affected. There is no violation of Articles 301 and 304 of the Constitution. Application of mind by the legislature is assumed. Each act of legislation is presumed to be valid and intra vires the Constitution unless shown to be otherwise.

44. At the cost of repetition, as observed in the earlier part of the judgment in view of the decision of Hon''ble the Supreme Court in K. Nagaraj and others v. State of Andhra Pradesh and another, 1985(1) S.C.C. 523, the ordinance making is a legislative function and the same cannot be invalidated on the ground of nonapplication of mind. Reference may be made to L.N. Mishra Institute of E.D. and Social Change v. State of Bihar, AIR 1988 S.C. 1136. It has been specifically held in the above referred judgment that Governor''s satisfaction under Article 213(1) of the Constitution of India, cannot be challenged in a Court of law on the ground that it was prompted by malice or ulterior purpose.

45. To be fair to the learned counsel for the petitioners, we may notice the law laid down in Bromley London Borough Council v. Greater London Council and another, 1982(1) All England Law Reports 129 and C.C.S.U. v. Minister for the Civil Service, 1984(3) All England Law Reports 935 @T1 = , wherein the question raised and answered is whether a public authority exceeded its statutory powers or it has violated the statutory procedure as well as it has only dealt with whether a valid contract is a contract or not, which are not the questions relevant in the case in hand though we have held in the earlier part of the judgment that the licence cannot be termed as a property tangible or nontangible particularly when it is the privilege of the State, which in turn the State has allowed the petitioners to exercise. However, the petitioners will be at liberty to bring to the notice of the State the harshness of the effect of the law as well as desirability of permitting the manufacture of liquor and beer and it is within the sole jurisdiction

of the State to grant any reprieve to the petitioners, in the facts and circumstances of each case.

@VERSUS = Versus46. In view of the observations made above, the writ petitions are dismissed with no order as to costs.

@T2 = RESULTPetitions dismissed.

