

(2017) 01 KAR CK 0001

In the Karnataka High Court

Case No : Writ Appeal No. 3374 of 2016 (EXCISE) connected with Writ Appeal Nos. 3368, 3211, 4048 and 4402 of 2016

State of Karnataka

APPELLANT

Vs

B. Govindraj Hegde

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), Article 19(6)
Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 — Rule 3(7-D)
Karnataka Excise Act, 1965 — Section 71

Citation : (2017) 2 KantLJ 513

Hon'ble Judges : Jayant Patel and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : Writ Appeal No. 3374 of 2016; Shri Aditya Sondhi, Additional Advocate General along with Smt. B.P. Radha, High Court Government Pleader, for the Appellant; Mohan Bhat, Advocate, for the Respondent No. 1; Writ Appeal No. 3368 of 2016; C.H. Jadhav, Senior Counsel for G.K. Bhat, Advocate, for the Appellant; Shri Aditya Sondhi, Additional Advocate General along with Smt. B.P. Radha, High Court Government Pleader, for the Respondent Nos. 1 and 2; Writ Appeal No. 3211 of 2016; Jayakumar S. Patil, Senior Counsel for Pavan G.N., Advocate, for the Appellant; Shri Aditya Sondhi, Additional Advocate General along with Smt. B.P. Radha, High Court Government Pleader, for the Respondent; Writ Appeal No. 4048 of 2016; Aruna Shyam M, Advocate, for the Appellant; Shri Aditya Sondhi, Additional Advocate General along with Smt. B.P. Radha, High Court Government Pleader, for the Respondent; Writ Appeal No. 4402 of 2016; M.S. Bhagwat, Advocates, for the Appellant; Shri Aditya Sondhi, Additional Advocate General along with Smt. B.P. Radha, High Court Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

1. As all the appeals arise from the very same order passed by the learned Single Judge, they are being considered simultaneously.

2. All the appeals are directed against the order dated 22-7-2016 and 20-9-2016

passed by the learned Single Judge in W.P. No. 19788 of 2015 (Excise) (B. Govindraj Hegde v. State of Karnataka and Others, 2016 (6) Kar. L.J. 76) and W.P. No. 45068 of 2016, whereby the learned Single Judge for the reasons recorded in the order has quashed and set aside the notification dated 9-6-2014 inserting sub-rule (7-D) in Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 and the amendment made in Rule 8 providing for annual fees for such licences for the persons belonging to Scheduled Caste/ Scheduled Tribe.

3. The short facts of the case appear to be that in the State of Karnataka, there is Karnataka Excise Act, 1965 (hereinafter referred to as "the Act" for the sake of convenience) which came into force on 30th September, 1967. The object of the Act inter alia provides that the same is enacted with a view to provide a uniform Excise law in the State for the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and to levy duties of excise thereon in the State of Karnataka.

4. Section 15 of the Act provides for prohibition of the excisable item without licence. Chapter VI inter alia provides for the licences and permits and it also provides for form and conditions of the licences etc.

5. Section 71 of the Act provides for rule making power with the State Government inter alia for regulating the periods and the localities in which the licences are to be granted and also for the persons or the classes of the persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted.

6. In exercise of the rule making power, the State Government has framed the Rules known as the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. Rule 3 provides for various types of licences which includes Hotel and Boarding House licences as per sub-rule (7) of the Rules.

7. On 9-6-2014 the State Government in purported exercise of the power issued a notification bringing about an amendment to insert sub-rule (7-D) in Rule 3 of the Rules which for ready reference is extracted hereunder:

"3. The relevant final notification published on 9-6-2014 is quoted in extenso for ready reference:

FINANCE SECRETARIAT

NOTIFICATION

No. FD 14 PES 2013, Bangalore, dated 9th June, 2014

Karnataka Gazette, Extraordinary No. 365, dated 9-6-2014

Whereas, the draft of the following rules further to amend the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, was published as required by sub-section (1) of Section 71 of the Karnataka Excise Act, 1965 (Karnataka Act

21 of 1966), in Notification No. FD 14 PES 2013, dated 20-1-2014, in Part IV-A of the Karnataka Gazette, Extraordinary No. 41, dated 20-1-2014, inviting objections and suggestions from all persons likely to be affected thereby within thirty days from the date of its publication in the Official Gazette.

And whereas, the said Gazette was made available to the public on 20th January, 2014.

And whereas, objections and suggestions received in respect of the said draft have been considered by the State Government.

Now, therefore, in exercise of the powers conferred by Section 71 of the Karnataka Excise Act, 1965 (Karnataka Act 21 of 1966), the Government of Karnataka hereby makes the following rules, namely. -

1. Title and commencement.—(1) These rules may be called the Karnataka Excise (Sale of Indian and Foreign Liquors) (Amendment) Rules, 2014.

(2) They shall come into force from the date of its publication in the Official Gazette.

2. Amendment of Rule 3.—In the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 (hereinafter referred to as the "said rules"), in Rule 3, after sub-rule (7-C), the foils shall be inserted, namely. -

"(7-D) Hotel and Boarding House Licenses owned by the person belonging to Scheduled Castes and Scheduled Tribes. -

(a) A licence under this clause shall be applied for and obtained in Form CL-7D from the Deputy Commissioner;

(b) No liquor under this licence shall be sold to persons other than those accommodated in the licensed hotel and boarding houses and their guests and casual visitors who take meals in such places:

Provided that no licence under this clause shall be granted unless the hotel and boarding house is having a minimum of fifteen double rooms in Corporation areas and ten double rooms in other areas."

3. Amendment of Rule 3-A. - In Rule 3-A of the said rules, after the letters and figure "CL-7", the letters and figure "CL-7D" shall be inserted.

4. Amendment of Rule 8.—In Rule 8 of the said rules, in sub-rule (1), after Item 7-C, the following shall be inserted, namely. -

"7-D. Hotel and Boarding House Licenses owned by the person belonging to Scheduled Castes and Scheduled Tribes specified in sub-rule (7-D) of Rule 3, in the case of. -

(a)

City Municipal Corporation areas having population more than 20 lakhs

Rs. 6,60,000 per year

(b)

Other City Municipal Corporation areas

Rs. 5,80,000 per year

(c)

City Municipal Council areas

Rs. 4,30,000 per year

(d)

Town Municipal Council/Town Panchayat areas

Rs. 3,64,000 per year

(e)

Other areas

Rs. 2,80,000 per year"

5. Insertion of new Form CL-7D. - After Form CL-7C appended to these rules, the following new form shall be inserted, namely. -

"FORM CL-7D

[See Rule 3(7-D)]

Licence for the sale of Indian liquor (other than arrack) or Foreign liquor or both to be drunk in the premises, combined with meals and refreshments in the Hotel and Boarding House owned by the person belonging to Scheduled Castes and Scheduled Tribes

Register No.:

Name of the licence holder:

Name of the agent or vendor

Town.

Locality Street

Door No.

I,.....the Deputy Commissioner of District in consideration of the payment of the prescribed licence fee of Rs.....do hereby authorise Srison of Sri residing in to sell Indian liquor (other than arrack) or Foreign liquor or both at Premises No.situated insubject to the conditions prescribed below. -

CONDITIONS

1. The licensee shall be bound by the provisions of the Karnataka Excise Act, 1965, and any general specific rules prescribed or which may from time to time be prescribed thereunder.
2. The privilege under this licence extends to the sale of Indian liquor (other than arrack) or Foreign liquors of the brands furnished by the licensee. Any alterations and additions to the lists furnished shall be approved by the Commissioner. No liquors below the strength of 25° UP (under proof) in case of Brandy, Whisky and Rum and 35° UP (under proof) in case of Gin and not more than 8 per cent of alcohol by volume in case of Beer will ordinarily be included in the list.
3. The holder of this licence shall upon requisition by any officer not below the rank of Sub-Inspector of Excise be bound to produce to such officer the original invoice showing the procurement of all liquors for the sale of which this licence is granted for inspection and to all the samples of the liquors in the shop to be tested.
4. The licensee is bound to maintain correct daily accounts of transactions and submit the return every month to the Excise Officer concerned, within the first week of the following month.
5. The licence may be suspended or cancelled in accordance with the provisions of Section 29 of the Act and licensee or his employee shall be liable for prosecution for breach of any of the conditions of the licence, under the provisions of the Act or the rules and orders thereunder.
6. The licence shall continue in force till the....
7. The sale of liquor is restricted to the residents for their own use and that of their guests requiring liquor with the meals supplied to them.
8. The opening and dosing hours shall be from 9.00 a.m. to 12 midnight.

Office of the Deputy Commissioner

Deputy Commissioner

..... District.

.....District.

By order and in the name of Governor of Karnataka

Sd/-

Under Secretary to Government (In-charge), Finance Department (Excise)".

As per the above rules, special provision is made for grant of licences to Hotel and Boarding houses owned by the person belonging to Scheduled Castes and Scheduled Tribes (hereinafter referred to as "the persons belonging to Reserved

Category" for the sake of convenience). The constitutional validity of the aforesaid notification bringing about the amendment in the Rules came to be challenged by the respondent-B. Govindraj Hegde, being Secretary of Federation of Wine Merchants Association, Karnataka, Bangalore, (hereinafter referred to as "the original petitioner" for the sake of convenience) by preferring writ petition being W.P. No. 19788 of 2015 before this Court.

8. The learned Single Judge ultimately in the said writ petition passed the impugned order and the amendment brought about is found to be unconstitutional and the learned Single Judge has set aside the said notification bringing about the amendment in the Rules as referred to herein above. Under the circumstances, the present appeals before this Court.

9. We may record that the State of Karnataka has preferred W.A. No.3374 of 2016, whereas W.A. No. 3368 of 2016 has been preferred by the person affected by the order of the learned Single Judge and not a party in the writ petition, W.A. No, 3211 of 2016 has been preferred by original third respondent before the learned Single Judge, W.A. No. 4048 of 2016 has been preferred by the original petitioner before the learned Single Judge, W.A. No. 4402 of 2016 has been preferred by the original respondent no. 4 before the learned Single Judge.

10. However as recorded earlier, since the order passed by the learned Single Judge is one which is impugned in all the writ appeals, we have heard all the respective learned Counsel for the appellants and the respondents. We have heard Mr. Aditya Sondhi, learned Additional Advocate General appearing with Ms. B.P. Radha, learned High Court Government Pleader for the State, Mr. C.H. Jadhav, learned Senior Counsel for Mr. G.K. Bhat, learned Counsel appearing for the persons affected by the order of the learned Single Judge (they are not party before the learned Single Judge), Mr. Mohan Bhat, learned Counsel appearing for original petitioner, Mr. Jayakumar S. Patil, learned Senior Counsel appearing for Mr. Pavan G.N, learned Counsel appearing for original third respondent, Mr. Aruna Shyam M, learned Counsel appearing for the original petitioner and Mr. M.S: Bhagwat, learned Counsel appearing for original fourth respondent.

11. We may record that since in the writ appeals preferred by the private respondents, Government is also joined as the party as well as other respondents (for the sake of convenience, the learned Advocates shall be referred to as "for the appellants" whereas the learned Advocate appearing for the main contesting party original petitioner shall be referred to as "for the original petitioner").

12. The learned Counsel for the appellants submitted that, it is by bringing about the amendment in the rules, the State has given special relaxation to the persons belonging to the reserved class. The contention on behalf of the appellants was that, as per the provisions of Article 15(4) of the Constitution of India, the State can make special provision for the advancement of any reserved class of the Society. It was also submitted that if as per Article 15(5) of the

Constitution, special provision can also be made when it is a subject relating to Article 19(1)(g) of the Constitution of India.

13. Learned Additional Advocate General contended that, the rationale behind provisions is that, as per sub-rule (7) for the licensees of Hotel and Boarding House, the requirement was that such Hotel or Boarding house should have minimum 30 double rooms in the Corporation area and 20 double rooms in other area. The State had found that very negligible percentage of the persons belonging to reserved class were in position to get the licence because of the requirement of the hotel to have 30 double rooms in the Corporation area and 20 rooms in the other area whereas, by virtue of relaxation granted for the persons belonging to reserved class, the requirement is reduced to minimum 15 double rooms in Corporation area and 10 double rooms in other areas.

14. Learned Additional Advocate General for the State and other learned Counsel appearing for the appellants submitted that by reduction of number of rooms available in the hotel for eligibility to get the licence, person belonging to reserved class would be uplifted and they will get an opportunity to get licence and conduct such business. It was submitted that the hotel having 15 double rooms and hotel having 10 double rooms is nothing but a relaxation in comparison to a Hotel having 30 double rooms in Corporation and 20 double rooms in other areas respectively and said Rule is incorporated to give opportunity to persons belonging to reserved class for carrying on the business of liquor. It was submitted that, if the State for the benefit of reserved class makes relaxation and makes the rule for such purpose, the action cannot be said to be unconstitutional or ultra vires to the power of the State since such action even otherwise is in accordance with the directive principles of State policy apart from the aspect that it is permissible to make law as per the provisions of Articles 15 and 16 read with Article 19(1)(g) of the Constitution.

15. Per contra, the learned Counsel appearing for the original petitioner contended that such relaxation is impermissible even as per the constitutional provision. He submitted that, when the State had put up the criteria as per the sub-rules for (7-C) Licence that a Hotel and Boarding House should have 30 double rooms in the Corporation area and 20 double rooms in the other areas, it must be uniform for all and any relaxation given would result into discrimination without any object to be achieved because the Act as per its object provides for uniform law for regulating sales, purchase, manufacture of liquor etc. It was also submitted that, the impugned amendment requires that the Hotel and Boarding house should be owned by a person belonging to reserved class, whereas, as per sub-rule (7) to the licence were available to everybody even if the Hotel or Boarding house were not belonging to the person concerned but, such premises should have minimum 30 double rooms in the Corporation area and 20 double rooms in the other areas. As per the provisions of sub-rule (7) for CL-7 Licence it was not required to have the ownership of Hotel or Boarding House and one can apply even if such Hotel or boarding house having minimum 30 double rooms or

20 double rooms as the case may be is acquired on rental basis or otherwise it would suffice. Whereas, under the amended Rule, requirement is to put up construction for the Hotel or boarding owned by the person belonging to reserved class. He submitted that, if the rationale or the object was to grant relaxation, it is no relaxation but rather more stringent condition is put up which would attract more financial investment in comparison to the requirement as it existed by virtue of sub-rule (7). He submitted that a judicial notice can also be taken if one is to own hotel or Boarding house having minimum 20 or 10 double rooms it would require more investment in comparison to a hotel or boarding house having minimum 30 double rooms or 20 double rooms obtained or taken on rental basis or having possession other than the ownership. The learned Counsel for the original petitioner submitted that if more investment is required and more money is required, it is no relaxation at all. Under the circumstances, neither there is any intelligible differentia nor the object to give upliftment to the reserved class would be achieved. But, on the contrary, the benefit, if any, would be available to only the persons belonging to reserved class having more financial capacity of owning the hotel and boarding house. Therefore the amendment made by the Rule is irrationale and it will not serve the object to be achieved. The learned Counsel also submitted that as per the constitutional provisions of Article 15 or 16, State cannot make relaxation under Article 19(1) (g) of the Constitution except in the matter pertaining to employment or in the matter pertaining to reasonable restriction but such reasonable restriction has to be in the interest of general public. It was submitted that the State can provide for a particular requirement for carrying on any trade or business may be of liquor but, it should be for all the citizens and there cannot be any relaxation in the requirement more particularly when it has no object to be achieved. The learned Counsel also contended that, if the State on account of less number of persons holding the licence of the reserved class has brought about the amendment, then the same is also contrary to the record inasmuch as, it has been considered by the State that total number of CL-7 licences granted are 921, out of which 28 belonged to reserved class were holding such licences but if considered in context to CL-9 licence, total number of licences granted were 3583 whereas the persons belonging to reserved class holding CL-9 licence were only 57. If the comparative ratio is considered, there were less number of persons belonging to reserved class in CL-9 licence. The contention put forward to give more opportunity to the persons belonging to reserved class for the licence of Hotel and boarding house is without considering the appropriate material and hence, the amendment would be result of arbitrariness and violative of Article 14 of the Constitution of India. The learned Counsel submitted that the learned Single Judge has rightly set aside the amendment and this Court may not interfere.

16. Before we further consider the facts of the present case, we find it appropriate to refer to certain case-laws.

17. The Apex Court in case of State of Maharashtra and Another v. Indian Hotel

and Restaurants Association and Others, (2013) 8 SCC 519 for testing a legislation as to whether it is arbitrary or not under Article 14 read with Article 19(1)(g) of the Constitution has observed at paragraphs 106 and 107 as under:

"Is the impugned legislation ultra vires Article 14?

106. Before we embark upon the exercise to determine as to whether the impugned Amendment Act is ultra vires Articles 14 and 19(1)(g), it would be apposite to notice the well-established principles for testing any legislation before it can be declared as ultra vires. It is not necessary for us to make a complete survey of the judgments in which the various tests have been formulated and reaffirmed. We may, however, make a reference to the judgment of this Court in *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191, wherein a Constitution Bench of seven Judges of this Court explained the true meaning and scope of Article 14 as follows : (AIR p. 193, para 5)

"5.... It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

107. The aforesaid principles have been consistently adopted and applied in subsequent cases. In *Ram Krishna Dalmia v. Sri Justice S.R. Tendolkar*, AIR 1958 SC 538, this Court reiterated the principles which would help in testing the legislation on the touchstone of Article 14 in the following words: (AIR pp. 547-548, para 11)

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discrimination's are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

These principles were reiterated by this Court in *Shashikant Laxman Kale v. Union of India*, (1990) 4 SCC 366. The relevant observations have already been noticed in the earlier part of the judgment."

(emphasis supplied)

The aforesaid shows that the classification must be founded on a intelligible differentia and that it must have rationale nexus to the object to be achieved. What is required is that, there must be a nexus between the basis of the classification and the object sought to be achieved so as to meet the test of Article 14 of the Constitution of India. Otherwise, Article 14 condemns the discrimination not only the substantive law but also procedural law. Further, as per the above referred observation made by the Apex Court if there is anything on the basis of the law or on the surrounding circumstances brought to the notice of the Court on which the classification made can be regarded as reasonable, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for stopping certain individuals or the Corporation to be hostile or discriminating the legislation.

17.1 In the very decision at paragraph 113 it was observed thus:

"The preamble of the Constitution of India as also Articles 14 to 21, as rightly observed in the Constitution Bench judgment of this Court in *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1, form the heart and soul of the Constitution. Taking away of these rights of equality by any legislation would require clear proof of the justification for such abridgment. Once the respondents had given prima facie proof of the arbitrary classification of the establishments under Sections 33-A and 33-B, it was the duty of the State to justify the reasonableness of the classification. This conclusion of ours is fortified by the observations in *Laxmi Khandsari v. State of Uttar Pradesh*, (1981) 2 SCC 600, wherein this Court observed as follows: (SCC pp. 609-610, para 14)

"14. We, therefore, fully agree with the contention advanced by the petitioners that where there is a clear violation of Article 19(1)(g), the State has to justify by acceptable evidence, inevitable consequences or sufficient materials that the restriction, whether partial or complete, is in public interest and contains the quality of reasonableness. This proposition has not been disputed by the Counsel for the respondents, who have, however, submitted that from the circumstances and materials produced by them the onus of proving that the restrictions are in public interest and are reasonable has been amply discharged by them."

(emphasis supplied)

The aforesaid shows that, when there is violation of Article 19(1)(g) of the Constitution, the State has to justify by acceptable evidence inevitable consequences or sufficient material that the restriction as sought to be imposed is in the public interest and contains quality of reasonableness. Further, the onus of proving that the restrictions are in the public interest or reasonable has to be amply discharged once class classification made is infringing the quality of the rights by a particular legislation.

18. As the aforesaid are the broad parameters to test the legislation or any subordinate legislation with the anvil of Article 14 read with Article 19(1)(g) of the Constitution of India, we need not burden the present order with the earlier case-law since the aforesaid decision takes in its sweep parameters for testing any legislation whether ultra vires to Article 14 or 19(1)(g) of the Constitution or not.

19. At this stage, we may also refer to the decision of the Apex Court in case of *Khoday Distilleries Limited and Others v. State of Karnataka and Others*, (1995) 1 SCC 574 wherein the Apex Court summarised the law at paragraph 60 of the said decision for the interpretation of the provisions of Article 19 read with Article 47 of the Constitution, which reads as under:

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

(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."

(emphasis supplied)

The aforesaid shows that the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, 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.

20. The aforesaid dicta of the Hon"ble Apex Court also shows that State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of liquor and it can also sell the licences to the citizens for the said purpose by charging fees. The State can impose limitations and restrictions on the trade or business in potable liquor under Article 19(6) or otherwise. The State can also carry on trade or business itself to the exclusion and in elimination of others right to sell licences and it can also preserve with itself to do trade or business in the same. But the pertinent aspect is that 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, of course subject to the limitations imposed by the State, but State cannot make discrimination between citizens who are qualified to carry on trade or business. The State can also adopt mode of selling licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory. What needs to be emphasised is that once the State has prescribed the limitation for business of a potable liquor, the State cannot discriminate between citizens who are qualified to carry on trade or business. The State may decide to retain certain business and may also decide to issue licences to the citizens, but once the conditions and the limitations are prescribed, it needs to be common either by condition prescribed or by limitations or by qualification for all the citizens.

21. We may also usefully refer to another decision of the Apex Court in case of *Aaskirwad Films v. Union of India and Others*, (2007) 6SCC 624 wherein the question arose before the Apex Court to consider as to whether the State can discriminate in the matter of taxation statute, wherein the Apex Court at paragraphs 24 and 25 has observed thus:

"24. This Court in this case not concerned with the application of test of reasonableness while considering the constitutionality of a statute. The test of reasonableness, however, would vary from statute to statute and the nature of the right sought to be infringed or the purpose for imposition of the restriction. It is also not a case where a section of the people have been picked up and they form the constituted class by itself. It is furthermore not a case where the State has picked up and chosen districts, objects, methods in the matter of imposition of tax. However, although a legislative body has a wide discretion, and taxation statute may not be held invalid unless the classification is clearly unreasonable and arbitrary but it is also trite that class legislation is that which makes an improper discrimination by conferring particular privileges:

"Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. A classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates. (See Weaver's Constitutional Law, Page 397)"

25. The purported classification only on the basis of language without anything more and in particular having regard to the difference in the rate of tax, in our opinion is ex-facie arbitrary. The burden was, therefore, on the State to show that the imposition was justified. Different rates of entertainment tax had not been levied having regard to the nature of theatre, the area where they were situated or extent of occupancy etc. It has not been explained as to whether cinema theatres exhibiting Telugu films suffer from any disadvantage which others had not been. It has not been shown as to why the same theatre where films in different languages are exhibited would be a class apart, only because at different times exhibit films produced in different languages. Moreover, how Telugu films have been treated as a separate class have not been stated. Although the Legislature enjoys a greater freedom and latitude in choosing persons upon whom and suggest upon which it can levy tax, it is trite that taxing legislation's are not immune from attack based on Article 14. It is also not the case of the respondent-State that in imposing different rate of tax, they intend to achieve an avowed object envisaged under Part IV of the Constitution of India."

(emphasis supplied)

The aforesaid shows that though the State has power to make a class legislation, it has to meet with the test of Article 14 of the Constitution. The class legislation which makes an improper discrimination by confirming a particular privilege upon a class of persons arbitrarily selected from the large number of persons, all of whom stand in the same position may not meet with the test of Article 14. The classification must not be arbitrary, artificial, or evasive and there must be a

reasonable, natural and substantial distinction in the nature of class or classes upon which the law operates. The Apex Court also found that mere classification on the basis of the language or a film without anything more or in particular having regard to the difference in the rate of tax is *ex facie* arbitrary. The Apex Court had taken note that the burden was therefore upon the State to show that the imposition was justified and since the said burden was not discharged, the imposition of different rate of tax did not achieve the object envisaged under the Constitution and ultimately the Apex Court struck down the impugned levy of tax providing for different rates.

22. We may also refer to one of the decision of the Division Bench of this Court in case of *State of Karnataka and Others v. Basavaraj Nagaor and Others*, ILR 2000 Kar. 870 (DB) wherein the question arose for consideration as to whether under Articles 14 and 16 of the Constitution, the State can provide addition of certain marks to the persons belonging to backward classes or Scheduled Castes and Scheduled Tribes. This Court in the above referred decision at paragraph 19 observed thus:

"19. Even the impugned Rules, examined from any angle, will not stand to judicial scrutiny. The reservation for the Scheduled Castes, Scheduled Tribes and Other Backward Classes is provided as per the mandate of Article 16 of the Constitution of India and by virtue of Section 4 of the Karnataka State Civil Services Act, 1978. As per Rules, reservation is provided for Scheduled Castes, Scheduled Tribes and Backward Classes. The reserved candidates who appear in the qualifying examination or interview obtain marks and a merit list is prepared. If they come according to merit in the open quota, they are appointed in the open quota itself. If according to merit, they are not able to come in the open quota, then they will be accommodated in the reserved quota irrespective of whether they are from rural area or non-rural area. But, by adding 10% of marks to the rural candidates, the urban backward classes, Scheduled Castes and Scheduled Tribes are deprived to get the appointment though they got similar marks or more marks and merit is given a go-by. This, in other words, amounts to further classification or mini-classification, which is impermissible and violative of Article 14 of the Constitution."

(emphasis supplied)

23. The Division Bench of this Court found that by addition of 10% marks to the Rural candidates, the urban backward classes, Scheduled Castes and Scheduled Tribes are deprived to get the appointment though they get similar marks and therefore it amounts to further classification or mini-classification and was held to be impermissible and violative of Article 14 of the Constitution.

24. In case of *State of Kerala and Others v. Unni and Another*, (2007) 2 SCC 365 and more particularly, the observations made by the Apex Court from paragraphs 30 to 36 shows that the principles on which the Constitutionality of a statute is to be judged and that of the subordinate legislation's are different. While imposing

conditions in regard to the prescribed normal norms, the State is expected to undertake a deeper study in the matter and it should also have undertaken the annual experiments. The subordinate legislation can be questioned on various grounds and it is well-known that the subordinate legislation would not enjoy the same degree of immunity as the legislative Act would. Unreasonableness can be one of the ground of judicial review of a delegated legislation. The reasonableness of a statute or otherwise must be judged having regard to the various factors which would include the effect thereof on a person carrying on a business. When a statute provides for a condition which is impossible to be performed, the unreasonableness of the statute shall be presumed, of course, it would be for the State to justify the reasonableness thereof. But at the same time if the State has provided a condition for licence to do business in liquor, all are entitled to be treated equally.

25. In view of the above read with the provisions of the Constitution and more particularly Articles 14, 15(4) and 19 of the Constitution, following propositions of law can be deduced:

(i) The State has the power to put the reasonable restriction on the rights of the citizen to practise any profession or carry on any occupation or trade or business. But such restriction has to meet with the test of Article 19(6) of the Constitution inasmuch as such restriction should be in the interest of general public. But when such restriction is provided, it should apply to all the citizens similarly.

(ii) Discriminatory treatment is not permissible in a matter where conditions are to be imposed in the interest of the general public while regulating the trade or business or any profession or occupation by any citizen under Article 19(1)(g). Of course it is open to the State to retain certain percentage of the share with itself or it is open to the State to provide quota in the matter of grant of licence for such trade or business but the conditions so prescribed in the interest of general public in exercise of the power under Article 19(6) of the Constitution should be adhered to.

(iii) Article 15(4) of the Constitution enables the State to make any special provision for advancement of any socially and educationally backward classes of the citizens or for the Scheduled Castes or Scheduled Tribes for giving separate treatment, but then again such should be based on intelligible differentia and it should also achieve the object with which a subordinate class legislation is made by the State. However before embarking upon making of class legislation, it is required for the State to undertake some study for bringing about such change in the law or the Rules. In any case, the burden would be upon the State to justify the making of a class legislation and it would also be a burden upon the State to demonstrate that such legislation would reach to the object to be achieved.

26. We may now further examine the facts of the present case. The Karnataka Excise Act, 1965 from its preamble shows that it is essentially enacted to provide uniform law relating to production, manufacture, possession, import, export,

transport, purchase and sale of liquor and intoxicating drugs and the levy duties of excise thereon. Even if the contention of the learned Additional Advocate General is considered that since there were different Acts prevailing in the State of Karnataka, the word "uniform law" found in the object, is to provide uniform law in the whole area of Karnataka, then also one cannot come out of the mandate of the Constitution as provided under Article 15 that the law has to give the same treatment and therefore one can say that the uniform law has been provided. In any case, the law itself would fall in the category of law made by the State Legislature under Article 19(1)(g) of the Constitution for general public interest in the production, manufacture, possession, import, export, purchase and sale of liquor and intoxicated drugs.

27. As in the present appeals, the issue is concerning the sale of excisable articles, the other aspect for production, manufacturing etc., need not be discussed. But Section 15 of the Act provides for prohibition of sale of any intoxicant except under the authority and subject to the terms and conditions of licence granted in that behalf.

28. Section 71(2)(e) of the Karnataka Excise Act, 1965, which provides for the power of the State to make Rules for carrying out the purposes of the Act reads as under:

"71. (2)(e) regulating the periods and localities in which, and the persons or classes of persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted and regulating the number of such licences which may be granted in any local area."

The aforesaid provision disclose that State has power to make the rules for the period and the localities in which, and the persons or classes of persons to whom, licences for wholesale or retail sale of any intoxicant can be granted and it has also power to regulate the number of such licences which may be granted in any local area. Broadly it can be said that the State may make Rule for the licences for wholesale or retail sale in a local area by providing the periods and the localities and in the manner of grant of licences the State may provide for persons or the classes of persons. The Rules are framed in exercise of the power under Section 71 of the Act and Rule 3 of the Rules provides for various licences for vending of Indian liquor or foreign liquor and such licences inter alia include retail shop, licences to the Clubs, Occasional licences, Special licences, Star Hotel Licences, Hotel and Boarding House Licences, Tourist Hotel licences, Tourist Hotel Beer Bar Licences, Licences to supply liquor on board of Train engaged by Tourism Development Corporation of the State Government or Central Government and various other licences. As we are not required to consider in the present appeals the other licences, we do not find it appropriate to discuss in detail in the present appeals.

29. Sub-rules (7) and (7-D) of Rule 3 which is sought to be inserted by the impugned amendment needs to be considered. Sub-rule (7) is for all Hotel and

Boarding House licences with the requirement that no licence shall be granted unless Hotel and Boarding House is having minimum thirty double rooms in corporation areas and twenty double rooms in other areas. Whereas by sub-rule (7-D) inserted by the impugned amendment, the requirement is reduced to minimum fifteen double rooms in the Corporation areas and ten double rooms in other areas. One class of licences of hotel and boarding house is already provided. Sub-rule (7) reads as under:

"3. (7) Hotel and Boarding House licences. -

(a) A licence under this clause shall be applied for and obtained in Form CL-7 from the Deputy Commissioner.

(b) No liquor under this licence shall be sold to persons other than those accommodated in the licenced hotel and boarding houses and their guests and casual visitors who take meals in such places:

Provided that no licence under this clause shall be granted unless the hotel and boarding house is having a minimum of thirty double rooms in corporation areas and twenty double rooms in other areas:

Provided further that the licences granted under this clause for the excise year 2001-2002 shall be allowed to renew the licences under the rule existing prior to the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquors) (First Amendment) Rules, 2002:

Provided further more that in respect of Hotels and Boarding Houses leased by the Karnataka State Tourism Development Corporation to private persons, firm or companies on renovate, operate, maintain and transfer (ROMT) basis, while granting or renewing the licenses under this clause, the Excise Commissioner may relax the condition regarding the minimum requirement of thirty double rooms in Corporation areas and twenty double rooms in other areas."

30. There is no requirement that the person should be owning a hotel and boarding house but what is required is that hotel and boarding house should have a particular minimum capacity of the double rooms in the respective area and the second requirement is that no liquor under this licence shall be sold to person other than those accommodated in the licenced hotel and boarding houses and their guests and casual visitors who take meals in such places. If sub-rule (7) is considered in contradistinction to sub-rule (7-D) sought to be inserted, it is apparent that a class within the class is made in the matter of hotel and boarding house licences. The distinction is that sub-rule (7-D) provides for the person belonging to the hotel and boarding houses owned by the person belonging to Scheduled Caste and Scheduled Tribe whereas sub-rule (7) is general and open for all.

31. The contention of the State is that such making of subordinate legislation by sub-rule (7-D) is permissible under Article 15(4) of the Constitution. Whereas the contention of the learned Counsel for the original petitioner is that sub-rule (7) is

itself under the Act read with the Rules, a restriction provided by the State in the business of liquor by virtue of Article 19(1)(g) of the Constitution read with Article 19(6) of the Constitution and therefore the State cannot discriminate.

32. As such, as per the above referred decision of the Apex Court in the case of Khoday Distilleries Limited (supra) when the restriction has been provided in interest of the general public by virtue of Article 19(6) of the Constitution upon the rights of the citizen under Article 19(1)(g) of the Constitution, equal treatment deserves to be given to all citizens. The State cannot contend that the restriction can be relaxed if the person belonging to reserved class is to do sale of liquor in hotel and boarding houses. When one speaks for restriction in the interest of general public, such restriction has to be common for everybody and every citizen will be required to face with the common restriction provided by the State in the rights of the citizen for trade or business. We may record that the Act read with the Rules when itself is a restriction in the business or trade of the liquor provided by the State, such restriction has to apply in the same manner to everybody and there cannot be different standard restriction if one is of a general category or one is of a reserved class. Therefore when one talks of restriction provided under Article 19(6) of the Constitution and the rights of the citizen under Article 19(1)(g) of the Constitution, it would not be open to the State to relax the restriction or qualification provided for enabling the citizen to do a particular business or trade. Of course, the aforesaid is with the clarification that it is open to the State to provide that a particular percentage of the business or sale of liquor of a hotel or boarding house may be retained by the State itself or the State may provide for a quota of a licence of hotel and boarding house for a particular class of a citizen may be reserved class. By the impugned amendment, the State has not provided for retaining of the business of sale of liquor in hotel and boarding house or the State has not provided for a particular percentage licence or a particular percentage of business for itself or for a reserved class. But the State for the same type of business has relaxed the restriction which otherwise has to meet with the test of Article 19(6) of the Constitution. It is hardly required to be stated that when one speaks of restriction in the interest of general public, there can be no compromise if the same business is to be undertaken by a person belonging to reserved class. Under the circumstances, if the provisions of the Act read with Rule has to meet with the test of Article 19(6) of the Constitution in the business of trade or business of liquor, relaxation in the requisition or qualification of a hotel and boarding house having minimum thirty" double rooms capacity in the Corporation area or twenty double rooms in the other areas cannot be made.

33. Under the circumstances, it can be said that sub-rule (7-D) by the impugned amendment would violate Article 19(1)(g) read Article 19(6) of the Constitution and hence ultra vires to the Constitution.

34. If the contention of the State is considered that the State can also provide for relaxation in the restriction imposed by Article 19(6) of the Constitution in the

right of citizen under Article 19(1)(g) of the Constitution in view of the provisions of Article 15(4) of the Constitution, then we may have to further consider as to whether it is based on intelligible differentia and such intelligible differentia is made with the object to be achieved or not. As observed by us earlier if the object is to give more opportunity to the persons belonging to reserved class and the same is with a view to create more convenient atmosphere by relaxation of the requirement of number of double rooms, then it would necessarily require two aspects to be considered. One is the requirement of investment to be made for establishing hotel and boarding houses and the other is further special circumstances leading to necessity of differential treatment. As discussed earlier, if one is to apply for licence under sub-rule (7) he need not have the ownership of a hotel and boarding house having minimum thirty double rooms in Corporation area or twenty double rooms in other area and such licence can also be obtained by a person by obtaining such building on either on lease basis or any other terms and conditions other than the ownership basis. Whereas sub-rule (7-D) mandates that the hotel and boarding house should be owned by the person belonging to reserved class. When one talks of ownership, it is bound to have more financial investment in comparison to building though may be of the larger capacity which can be possessed on lease or leave and licence basis. Therefore, if the object is to make relaxation so as to uplift the reserved class, such relaxation by the impugned amendment leads to the requirement of more investment in contradistinction to the existing provisions of sub-rule (7). Resultantly it can be said that there is no relaxation in the economic requirement but rather it is more stringent upon the persons belonging to reserved class. If the condition imposed by the subordinate legislation is more stringent from the economic point of view of requirement of investment, we are unable to gather as to how such can be termed as relaxation or as to how such relaxation would achieve the object for the upliftment of the reserved class for which a class legislation is sought to be made. On the contrary, such class legislation even if it is considered for the person belonging to reserved class since there is requirement of ownership in the impugned legislation, it would not at all achieve the object provided under Article 15(4) of the Constitution but it would act in a reverse manner.

35. Apart from the above, if the contention of the State is to provide more opportunity to the persons belonging to reserved class for licences of hotel and boarding house just on a mere data that the number of persons holding licences under sub-rule (7) are very less in comparison to the other persons holding licences, then also the facts and figures submitted on behalf of the State shows that the persons belonging to reserved class are having 1.5% CL-9 licences, whereas CL-7 licence is concerned for such persons, percentage is 3%. Therefore if the object was to be achieved for providing more opportunity to the persons belonging to reserved class in the business of sale of liquor, the relaxation could be provided in CL-9 licences which provides for Bar and Restaurant, wherein even otherwise also, the investment will be much less in comparison to licences of

hotel and boarding house. This shows the arbitrariness in the decision making process of a subordinate legislation.

36. The learned Additional Advocate General and the learned Counsel for the appellants did contend that the decision of the State Would not be rendered illegal just on a mere ground that there could be better policy for the object to be achieved and hence the aforesaid ground may not be considered to hold the subordinate legislation as arbitrary. We may record that it is not a matter of mere arbitrariness or a better policy available but is a matter of burden to be discharged by the State for giving a separate treatment or making a class legislation with the object to be achieved. If the object of the State was to provide for more opportunity to the persons belonging to the reserved class in the business of sale of liquor, the State could consider the lowest ratio of the reserved class from amongst the persons holding different licences, which has not been opted for. In any case, there is no valid justification made at all to fall back upon the licensees of hotel and boarding houses only in contradistinction to the licences of Bar and Restaurant, if the State was to achieve the object of giving more opportunity to the persons belonging to reserved class. As observed by us herein above, in any case, it is not a relaxation but rather more stringent condition in the guise of economic requirement of investment as sought to be provided by the impugned amendment. Further no detailed study has been undertaken before bringing about the amendment as contended by the State. It has not even considered that if the requirement of ownership is provided, the resultant effect would be more stringent and that too of a person belonging to reserved class having higher financial capacity of investment of hotel and boarding house having at least fifteen double rooms in the Corporation area and ten double rooms in the other area.

37. In our considered view, the State has failed to discharge the burden of demonstrating that such classification or a differential treatment is with a view to achieve the object of providing more opportunity to the reserved class. Under the circumstances a class legislation sought to be inserted by sub-rule (7-D) in the Rules, even if considered for the sake of examination that the State has power under Article 15(4) of the Constitution, it would not meet the test of Article 14 of the Constitution, not being arbitrary and it has no nexus to the object sought to be achieved and hence the same has to be termed as unconstitutional and void.

38. The learned Counsel appearing for the appellants did contend that so far as the original petitioner is concerned he is holding CL-9 licence and therefore he cannot be said to be affected by the amendment brought about for CL-7D licence which is relaxation in CL-7 licence and therefore the petitioner cannot be said as aggrieved party. If the petitioner had no locus, it would be a public interest litigation for which the learned Single Judge had no jurisdiction. It was submitted that the aforesaid aspect has not been properly considered.

39. Be it recorded that the original petition is not filed only in the individual capacity but is filed as the Secretary of Federation of Wine Merchants Association

in the Karnataka State and the Association is of the Members of seller of the liquor in thirty districts. It is not the case of the State that none of the members of the Association are not holding any CL-7 licences. Further the very association had filed objection when the objection were invited from the general public before bringing amendment to the Rules. In the objections (copy whereof is produced by the original petitioner at Annexure-B), it has been contended inter alia that the proposed rule is highly discriminatory and arbitrary and is not based on class criterion. In the very objection it has been also stated that the action by the State should not result into destroying the business and the mandate of Article 14 of the Constitution should be respected and the adverse effect on the lawful business of the licence holders by the proposed amendment is also pleaded. Under these circumstances, it is not possible to accept the contention that Federation of Wine Merchants Association of the Karnataka whose members are sellers of the liquor which would include the licence holder of hotel and boarding houses, if has preferred the original writ petition through its Secretary, it cannot be said that the original petitioners are not aggrieved by the impugned legislation.

40. In any case, the original petitioners namely Federation through its Secretary cannot be said to be a third party to the impugned legislation when they are in the business of selling of liquor in the State of Karnataka. Further more when the constitutional validity of a subordinate legislation is challenged which infringes the rights of the citizen of trade in the sale of liquor, it is not possible for us to accept the contention that the petitioner cannot be said to have any locus standi to prefer the main writ petition and hence said contention fails.

41. We may also record that the learned Counsel appearing for the appellants as well as the respondents have relied upon certain decisions but considering the facts and circumstances of the present case we do not find that such decisions are having no applicability.

42. In view of the above, we find that the ultimate decision taken by the learned Single Judge for declaring the impugned amendment brought about by the notification dated 9-6-2014 as unconstitutional, calls no interference. However, we make it clear that the decision will have the prospective effect inasmuch if the licences were already granted under amended sub-rule (7-D) and the licence holder concerned who had already started his business pursuant to grant of such licence under sub-rule (7-D) same shall remain unaffected if already undertaken i.e., prior to the interim stay granted by the learned Single Judge in the main writ petition and by the impugned order their right to continue the business until the expiry of the period of the licence shall remain unaffected.

43. Subject to aforesaid observations, all the appeals are hereby dismissed. Considering the facts and circumstances we make no order as to costs.

44. All pending I.As. do not survive for consideration and accordingly they stand disposed of.