

(2000) 07 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 769 and 775 and W.P. No's. 8464, 9288, 11609 and 11621 of 1999

The State of A.P. and Others

APPELLANT

Vs

Grage Martin Distillery Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 15-07-2000

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 17(1), 28
Constitution of India, 1950 — Article 14, 19(1), 19(6), 226, 301

Citation : (2000) 07 AP CK 0005

Hon'ble Judges : R. Ramanujam, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; Jalakam and Sampath Kumar, for the Respondent

Judgement

N.Y. Hanumantappa, J.—The writ appeals are filed by the State against the order of the learned Single Judge dated 15-3-1999 passed in W.P.Nos. 7996 and 8338 of 1998 which were filed by Grag Martin Distillery Private Ltd., Goa, and Swan Distilleries Private Ltd., Goa respectively to quash G.O.Ms.No.166, Revenue (Excise-II) Department, dated 18-3-1998 issued by the Government of Andhra Pradesh and the tender notification dated 20-3-1998 issued by the A.P.Beverages Corporation Ltd., pursuant to the said G.O. The parties in the writ appeals are referred to as arrayed in the writ petitions. The facts that led to the filing of the writ petitions, briefly stated, are as follows: The Government in G.O.Ms. No.166, Revenue (Excise-II) Department, dated 18-3-1998 as the Excise Policy for the year 1997-98 had come to an end by 31-3-1998 issued orders after the submission of the report by a Cabinet Sub-committee for the Excise Year 1998-99, whereunder certain guidelines were issued for the year 1998-99. Among others, under Rule-8 of the G.O., A.P.Beverages Corporation Limited was advised to procure A,B & C categories of liquor from the distilleries located within the State as sufficient production capacity for these categories exists within the State. However, according to the G.O., they may continue to import premium

brands i.e., "D" category. A period of three months may be given for those who would like to establish production facility within any existing distillery or tie up with any local distillery regarding A, B & C categories not manufactured or produced within the State. Pursuant to the said G.O. the 2nd respondent in the writ petitions issued tender notification bearing No.APBCL/98-99/1, dated 20-3-1998 calling for sealed tenders from the local distilleries situated in Andhra Pradesh who are possessing a valid excise licence issued by the 3rd respondent, the Commissioner of Prohibition and Excise, Hyderabad and are willing to enter into contract, agreement with the Corporation for the supply of Indian liquor and Wine of categories A, B & C for the Excise year 1998-99.

2. Challenging the said G.O. dated 18-3-1998 and the notification dated 20-3-1998 issued pursuant thereto, the writ petitioners filed the two writ petitions. In the affidavits filed in support of the writ petitions the petitioners submit that the petitioners are the Companies incorporated under the Companies Act, 1956 having the registered office and factories at Goa engaged in the manufacture of Indian Liquor (Brandy, Whisky, Gin, Rum and Vodka) at their plant in Goa and for sale in Goa as well as in the neighboring States of Kerala, Pondicherry and Andhra Pradesh. The petitioner in W.P.No.7996 of 1998, who hold valid licence issued by the Government, participated in the tender notification dated 20-3-1998 and submitted its tender together with Earnest Money Deposit of Rs.50,000/- for the wholesale supply of liquor or other intoxicants in the State of Andhra Pradesh. The petitioner in W.P.No.8338 of 1998 apprehends that it might be prevented from participating at the threshold itself that in view of the fact that the tender form issued to the persons from outside the State like him clearly stipulates that it is only for supply of "D" category Indian Made Foreign Liquor (IMFL) (Premium) category and Beer. The writ petitioner in W.P.No.8338 of 1998 was not even given a tender form for the other categories by the 2nd respondent and cannot participate in view of the restriction imposed by the orders dated 18-3-1998 and the notification dated 20-3-1998. The writ petitioner in W.P.No.7996 of 1998 was participated in the tender for the supply of Indian liquor floated by the 2nd respondent in the previous year i.e., 1997-98, which was accepted by the 2nd respondent and the orders placed were duly executed by the petitioner.

3.The petitioners submit that in terms of Section 17 of the A.P. Excise Act (for short the "Act") the Government can grant to any person the exclusive privilege of manufacturing or of supplying by wholesale or of selling any liquor or other intoxicants within such area in the State. In terms thereof the Government has granted the exclusive privilege for procuring in wholesale to the 2nd respondent and accordingly the 2nd respondent has been procuring the Indian liquor by floating tenders. While matters stood thus, by G.O.Ms.No. 166, dated 18-3-1998 the 1st respondent has advised about the Excise Policy for the year 1998-99. To repeat, that in terms of Clause-8 of the said order the 2nd respondent has been directed to procure A,B & C categories liquor from the distilleries located within the State as these purportedly exists sufficient production capacity for these

categories within the State. However, the 2nd respondent has been advised to continue to import premium brands i.e., "D" category. It has also been stated that a period of about three months may be given for those who would like to establish production facility within any existing distillery or tie-up with any local distillery regarding A,B and C categories not manufactured or produced within the State. As stated supra pursuant to this the 2nd respondent has issued tender notification dated 20-3-1998 calling for sealed tenders from the local distilleries situated in Andhra Pradesh who are possessing a valid excise licence issued by the 3rd respondent and are willing to enter into contract, agreement with the Corporation for the supply of Indian liquor and wine of categories A,B and C for the excise year 1998-99. The petitioners aver that though they hold licence issued by the Government and has been successful bidder in the tender floated for the year 1997-98 by the 2nd respondent, they will not be able to participate in the tender due to the G.O.Ms.No.166, dated 18-3-98 and the subsequent notification of the 2nd respondent, dated 20-3-98 since they do not have a distillery located in the State of A.P. The petitioners, therefore, apprehending that in view of Clause-8 of G.O.Ms.No.166, dated 18-3-1998 and the condition imposed in the tender notification dated 20-3-1998 and that since they have the distillery situated in the State of Goa and not in the State of Andhra Pradesh their licence will be rejected, filed the writ petitions.

4. The writ petitioners submit that the imposition of a condition that only distilleries which are situated within the State of A.P. alone are entitled to participate in the tendering process results in exclusion of distilleries situate outside the State. According to them such an action of the respondents is unconstitutional and creates invidious discrimination between local distilleries on one hand and the outside distilleries on the other, which is violation of Article 14 of the Constitution of India. They also submit that it is well settled that when the State permits trade or business in potable liquor every citizen has the right to carry on the trade and the State cannot make discrimination between the citizens who are qualified to carry on the trade. According to them the G.O. and the tender notification imposing a condition that only local distilleries can participate has no nexus with maximization of revenue and on the contrary by eliminating competition the revenue goes down to the detriment of the State and the consumer is also affected adversely. The petitioners further submit that it is well established economic principle that free trade and competition ensures the best quality at most reasonable prices to consumers and any interference with this process can only be at the cost of the consumers and it is obvious that the creation of the cartel in A.P. to whom the Government proposes to handover the entire local trade on an exclusive basis, ultimately would prove detrimental to the common man as well as the revenue of the State. The policy of the Government, according to the petitioners, is, therefore a fraud on the public and abuse of the powers vested in the Government.

5. The respondents, denying all the allegations of the petitioners, filed the counter affidavits stating, inter alia, that by an enactment of the Andhra Pradesh

(Regulation of Wholesale Trade and Distribution of Retail Trade in Indian Liquor, Foreign Liquor, Wine and Beer) Act, 1993 (for short " Regulation Act") (Act 15/93) the State of A.P. took over wholesale trade and distribution of the liquor and beer. It was stated that under the said Act A.P.Beverages Corporation Limited has been given the exclusive privilege of importing, exporting and carrying on the wholesale trade and distribution in Indian Liquor and Foreign liquor. According to the respondents the provisions of the said Act were considered by the Supreme Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, and laid down the law that trade or business in potable liquor is a trade or business in res extra commercium and hence can be regulated and restricted even by an executive order, provided it is issued by the Governor of the State. It was further stated that Section 17(1) of the A.P.Excise Act empowers the Government, subject to the provisions of Section 28 of the Act and the Rules made thereunder and subject to such conditions as the Government may deem fit to impose, to grant for a fixed period to any person, at any place, lease or licence or both either jointly or severally for the exclusive privilege (i) of manufacturing or supplying by whole sale or of both; or (ii) of selling by whole sale or by retail; or (iii) of manufacturing or of supplying by wholesale, or of both and of selling by retail, any liquor or other intoxicant within any such area in the State as may be specified in the said order. As per the provisions of the Act and the Rules made thereunder the Corporation shall be bound by all the provisions of the Act and the Rules relating to the procurement of Indian Liquor and Foreign Liquor and sale to the retailers existing and issued from time to time. The Corporation shall also abide by the orders, and directions issued by the Government and Commissioner of Excise. The respondents in the writ petitions submitted that as it has come to the notice of the Government that large quantity of non-duty paid liquor was being smuggled into the State and this issue was also raised in the Assembly the Government of Andhra Pradesh vide G.O.Ms.No.99, dated 24-2-1998 constituted a Cabinet Sub-Committee to suggest steps to be taken for proper implementation of the prohibition policy during 1998-99 and for controlling the sale of non-duty paid liquor (IML) in the State. After the recommendations made by the Cabinet Sub-committee that the imports be banned in the category of A,B and C grade liquor with a view to curb the menace of non-duty paid liquor, issued G.O.Ms.No.166, dated 18-3-1998. However, it exempted to import premium category i.e., "D" grade liquor. It is also stated that as adequate production facilities are already existed within the state of Andhra Pradesh in A,B and C categories of liquor the 2nd respondent was advised to procure the same within the State of A.P. According to the respondents that no person has a fundamental right to carry on trade in liquor and trade in liquor has been treated as outside commerce and that there cannot be business in crime. It is also stated that it is not as if the manufacturers situated outside the State are totally prohibited from supplying A,B and C categories of liquor to A.P.Beverages Corporation. Clause 8 of G.O.Ms.No.166, dated 18-3-1998 makes it clear that these manufacturers are entitled to enter into a tie-up or establish a distillery within the State with any existing distillery or

local distillery. Incidentally, this policy also would result in encouragement to local distilleries. The respondents further stated that by curbing the flow of non-duty paid liquor into the State the loss of revenue to the State would also be curbed. Restricting the choice to persons having distilleries within the State of Andhra Pradesh is neither arbitrary nor violative of Article 16 of the Constitution of India. The allegation, according to the respondents, that the local distilleries have formed a cartel and this cartel is dictating the policies of the State, is a travesty of fact, without any basis and has been made only to mislead the facts. The Government has not indulged in discrimination and the object in requiring A.P.Beverages Corporation to procure A,B and C categories of liquor from manufacturers within the State is to ensure prevention of smuggling in non-duty paid liquor and inasmuch as the production facility available within the State is far in excess of the peak demand. The classification, according to the respondents, has a reasonable nexus with the object sought to be achieved. Since curbing smuggling in non-duty paid liquor would result in enhancement of revenue it would also ensure that public interest does not suffer. The action of the Government is neither discriminatory nor violative of Article 16 of the Constitution. The respondents stated that the action of the Government is guided by the overall interests of the State, augmenting revenue and curbing illegal activities in liquor trade and its action is only in public interest. The action of the Government has not created invidious discrimination between the local distilleries and the outside distilleries.

6. Traversing the averments in the counter affidavit filed by the respondents, additional affidavits were filed in the writ petitions denying the allegations made in the counter affidavits, offering to supply the products to the 2nd respondent at Rs.230/- per case for the year 1998-99 and seeking for grant of interim stay of G.O., dated 18-3-1998 and the notification dated 20-3-1998. The respondents filed the counter affidavit to the additional affidavit, inter alia, stating that the rate quoted by the writ petitioners was after the tenders for 1998-99 were opened and the rate contracts have been entered into and that the offer made by the writ petitioners was after the arguments were partly concluded. It was also stated that essentially the action of the Government is a matter of policy and that courts cannot interfere with the policy matters unless the decision is totally perverse. The respondents declined to entertain the plea for establishment of a distillery in the State of A.P. stating that there are sufficient number of local distilleries located to meet the requirements within the State of A.P. During the final stage of Writ Petition proceedings the learned counsel for the writ petitioners represented before the learned single Judge to permit the writ petitioners for establishment of their own distillery in the State of A.P. and that they will not press for quashing of the portion of Clause-8 of G.O.Ms.No.166, dated 18-3-1998. Dealing with the case the learned single Judge on 10-7-1998 permitted the writ petitioners to file an additional affidavit raising additional grounds, which was filed in the court itself, and ordered as follows:

"A period of about three months may be given for those who would like to

establish production facility with any existing distillery or tie up with any local distillery regarding A,B and C categories not manufactured or produced within the State."

Thereafter the writ petitioners filed the additional affidavits raising the additional grounds and after hearing both sides and going through the affidavits and the counter affidavits the learned single Judge on 27-7-1998 passed the following order:

"As the petitioners expressed their intention to file the applications in spite of the order of the Government dated 25-5-1998 with a view to see how the Government will react to the applications that are going to be filed by the petitioners, I am inclined to give directions not only to the Government but also to the Municipal Corporation of Hyderabad, Chief Inspector of Factories, who have to approve the plans and issue no objection certificate, to dispose of the request of the petitioners in time bound manner. If the petitioners approach the Municipal Corporation of Hyderabad for approval of the plans, it shall pass orders within one week from the date of receipt of such applications. Likewise, the Chief Inspector of Factories shall consider the request for grant of no objection certificate within one week from the date of filing of application before him. After completion of formalities, as and when the petitioners file applications, the Government shall dispose of the same within four weeks from the date of receipt of applications. It is needless to mention that any order to be passed by the 1st respondent shall be speaking order on the issues raised by the petitioners and if the petitioners or their counsel want to make submissions before passing the order the officer concerned shall give a personal hearing to them and then pass orders."

Challenging the said order of the learned single Judge, the State filed W.A.Nos.1727 and 1728 of 1998 and a Division Bench of this Court by a common order dated 30-10-1998 passed the following:

"We are of the view that the impugned direction is something which does not legitimately fall within the scope of clauses 15 of the Letters Patent. We, therefore, affirm the order of the learned single Judge so far as it directs the Government to pass appropriate order after giving an opportunity of making personal representation to the writ petitioners" representatives. However, as far as the other directions given to the Municipal Corporation of Hyderabad and the Chief Inspector of Factories are concerned, admittedly, the stage for consideration by such authorities has not yet come and the question of processing the applications will arise only after the letter of intent is issued by the State Government. In that view of the matter, it is unnecessary at this stage to issue any directions to the Municipal Corporation of Hyderabad and the Chief Inspector of Factories. The State Government will fix an early date so as to be within a month from the date of receipt of a copy of this order for affording opportunity of personal representation to the petitioners" representatives and if the petitioners" representatives are not present on the date fixed for hearing, the

matter will be disposed of on its own merits. To that extent, the directions given by the learned single Judge are deleted and the impugned order is modified"

Thereafter consequent upon the proceedings dated 27-7-1998 of this Court the Writ petitioners filed an application dated 24-8-1998 before the authorities concerned for grant of Letter of Intent to establish distillery. Thereupon the 1st respondent considered the application of the writ petitioners and by order dated 30-12-1998 rejected their request for permission to grant Letter of Intent to establish distillery within the State of Andhra Pradesh or allow them to supply "A" category liquor from outside the State as per the present Excise Policy.

7. Again the writ petitioners filed additional affidavit raising additional grounds seeking to quash G.O.Ms.No.166, dated 18-3-1998 and the notification dated 20-3-1998. The State also filed the additional counter affidavit rebutting the allegations made in the additional affidavit.

8. The learned single Judge after hearing both sides and after going through the material available held that the only object sought to be achieved classifying liquor producers into two groups, according to the State Government, is to curb the illegal entry of non-duty paid liquors into the State. According to the learned single Judge

"the classification made by the Government has no nexus with the object sought to be achieved. Further, as long as the statute and rules permit the production of liquor within the State more so the brands of liquors not being produced within the State, the Government is not justified in rejecting the applications of the petitioners for establishment of distilleries of their own in the State of Andhra Pradesh with a view to compete with the local manufacturers and to supply liquors either to the second respondent Corporation at competitive rates by participating in the tenders along with others or to export the liquors manufactured in their distilleries outside the State of Andhra Pradesh, which is not prohibited either under the Act or under the Rules from which the Government is likely to improve its excise revenues both by way of excise duty and sales tax apart from providing employment potentiality without compelling the drinking public to drink particular brand of liquors against their taste and liking, under the guise of exclusive privilege in the trade of potable liquors is nothing but arbitrary exercise of power and the action of the Government lacks bona fides."

Having held so the learned single Judge set aside Memo No. 77453/Excise-III/98-5, dated 30-12-1998 issued by the Government rejecting the application of the writ petitioners for grant of Letter of Intent and to allow them to supply "A" category liquor from outside the State and allowed the writ petitions with costs. Against the said order of the learned single Judge the State filed the present writ appeals and during the pendency of the writ appeals filed by the State the Excise Policy for the year 1998-99 came to an end by 31-3-1999 and the Government after reviewing the Excise Policy in the light of the experience

gained during the year 1998-99 it was decided to continue the existing policy for the year 1999-2000 and issued G.O.Ms.No.234, Revenue (Excise-II) Department, dated 22-3-1999. Challenging the said G.O. four writ petitions - W.P.Nos.8464, 9288, 11621 and 11609 of 1999 - - are filed by the distilleries located outside the State of A.P. W.Nos. 8464 and 9288 of 1999 are filed by the respondents in the writ appeals and W.P.No. 116211 and 11609 of 1999 are filed by the others.

9. The learned Advocate General appearing for the respondents-State submits that the decision with regard to the implementation of Prohibition and Excise Policy for the year 1998-99 after taking the unanimous opinion expressed by various parties, groups and associations and also the recommendations made by the Cabinet sub-committee constituted for the purpose and with a view to curb the menace of non-duty paid liquor G.O.Ms.No.166, dated 18-3-1998 was issued by the Government directing the A.P.Beverages Corporation Limited to procure A,B and C categories of liquor from the distilleries located within the State and however, advised to continue to import "D" category from other States and therefore it cannot be said that the decision of the Government with regard to the Excise Policy for the year 1998-99 is arbitrary and illegal. He contends that the citizen has no fundamental right to trade in the liquor and the State alone has the exclusive right or privilege to manufacture, sell or trade in liquor and therefore the Court cannot interfere with the policy decision of the State. He also submits that the exercise of framing the excise policy for the year 1998-99 and the real intention of the Government is only to control the sale of non-duty paid liquor and therefore it cannot be said that the action of the Government amounts to colourable exercise of power to confer and favour the local distilleries. The learned Advocate General further submits that the object of excise policy for a tie up arrangement with distilleries inside the State and not to permit import from outside the State is to prevent smuggling of liquor and evasion of payment of duty and that the action of the Government is not discriminatory. He also submits that the permission granted to the outside distilleries earlier prior to imposition of prohibition to participate in the tenders for supply of liquor does not give any preferential right to the outside distilleries for participating in tenders after partially lifting of the prohibition.

10. On the other hand the writ petitioners counsel submit that the action of the Government in shutting the outside distilleries from participating in the auctions and creating monopoly in favour of the distilleries functioning within the State is not justified and therefore the impugned Government Order is arbitrary and violative of principles of equality. He contends that when the State permits trade or business in potable liquor every citizen has the right to carry on the trade and the State cannot make discrimination between the citizens who are qualified to carry on the trade and therefore the arbitrary restriction imposed by the State by the impugned G.O. is in gross violation of the fundamental right guaranteed by Article 16 of the Constitution of India. The Government, according to the writ petitioners, without application of mind introduced an irrational policy and has abdicated its functions and acted as per the dictates of the local liquor lobby and

that therefore the policy of the Government is a fraud on the public and an abuse of the powers vested in the Government. The learned counsel for the writ petitioners contend that every citizen in the country has a right to participate in trade and this right cannot be curtailed on the basis of region and therefore the impugned action of the Government is totally arbitrary and discriminatory. He also submits that the contention of the Government that there has been sufficient production capacity for A, B and C categories of liquor within the State has no nexus to the policy relating to the procurement of Indian liquor and therefore the fact that there is sufficient production capacity within the State has no relevance when it comes to the procurement of Indian liquor and that the action of the Government is totally extraneous to the policy.

Before considering whether the view taken by the learned single Judge in allowing the writ petitions is correct or not, it is appropriate to bear in mind some of the relevant provisions of the A.P.Excise Act, 1968, the Regulation Act, 1993 and the Rules made thereunder and subsequent G.Os. issued by the Government from time to time and also the settled principles dealing with the scope of this Court to interfere under Article 226 of the Constitution of India.

11. Firstly let us deal with the question whether the statutes provide the power to the Government to grant to any person the exclusive privilege of manufacturing or of supplying by whole sale or of selling any liquor or intoxicant within such area in the State and whether it has the power to impose a condition that only distilleries which are located within the State of Andhra Pradesh alone are entitled to participate in the tendering process in exclusion of the distilleries situate outside the State.

12. To decide this question, it is necessary to go through certain provisions of the A.P.Excise Act and the Rules made thereunder. Section 17(1) of the A.P.Excise Act empowers the Government, subject to the provisions of Section 28 of the Act and the Rules and subject to such conditions as the Government may deem fit to impose, to grant for a fixed period to any person, at any place lease or licence or both either jointly or severally for the exclusive privilege of manufacturing or supplying by wholesale or of both; or of selling by wholesale or by retail; or of manufacturing or of supplying by wholesale, or of both and of selling by retail, any liquor or other intoxicant within any such area in the State as may be specified in the said order. Section 4(1) of the Regulation Act, 1993 provides that the right to carry on wholesale trade and distribution of Indian Liquor, Foreign Liquor, Wine and Beer shall on and from the appointed date solely vest in the Government and subject to such rules as may be made in this behalf, the A.P.Beverages Corporation Limited, a Corporation wholly owned and controlled by the Government shall have the exclusive privilege of importing, exporting and carrying on the wholesale trade and distribution of Indian Liquor, Foreign Liquor, Wine and Beer on behalf of the Government, for the whole of the State of Andhra Pradesh and no other person shall be entitled to any privilege of importing, exporting and supplying the same in whole sale or distributing the same for the

whole or any part of the State. Section 7 of the Regulation Act prohibits private trade in Indian Liquor and Section 7(1) provides that no person shall import, export or otherwise carry on wholesale trade in Indian Liquor, Foreign Liquor, Wine and Beer or carry on retail trade in Indian Liquor, Foreign Liquor, Wine and Beer in contravention of the provisions of the Act. As per Rule 11 of the Rules made under the Regulation Act, the A.P.Beverages Corporation shall get the supply of Indian Liquor and Foreign Liquor from such manufacturers within or outside of the State in such quantities and on such prices as it may be considered necessary and proper. As per Rule 19(1) of the Rules the Corporation shall abide by the orders and the directions issued by the Government and the Commissioner of Excise. Therefore it is very much clear from the statutory provisions that the Government is empowered by the statute and issued the impugned G.O. and that the Corporation is bound to abide by the orders and directions issued by the Government.

13. Three questions arise for our consideration -- First, whether the right to freedom of trade or business is fundamental right? Secondly, whether to carry on any business of his choice is an absolute and fundamental right of every citizen or the same is subject to certain restrictions when the State is desirous of imposing such restrictions on trade or business, which are reasonable and in the interest of welfare of the State and the public, including the economy of the State? Thirdly, whether this Court can interfere with the policy decision of the State? In other words whether judicial review is warranted in decision-making process of the State or it confined only to the procedure followed in decision-making.

14. It is true that every citizen of the Country has fundamental right to carry on any business of his choice, but the same is controlled if such a business is a dangerous to the society. In such an event the State may prohibit the person to carry on such business or allow to carry on such business only under the licence or permit. It is well settled principle that though a citizen has a fundamental right to trade or business, he has no right to compel the Government or any other body that it shall deal the business with him only. The Government or individual can enter into contract with any person it chooses.

15. The contentions of the writ petitioners are two fold -- firstly that when the State permits trade or business in potable liquor every citizen has the right to carry on the trade and the State cannot make discrimination between the citizens who are qualified to carry on the trade, that the writ petitioners are qualified for the tender floated by the 2nd respondent the State arbitrarily restricted the choice to persons having distilleries within the State of A.P., that the respondents discriminated against the petitioners and that there is a gross violation of the fundamental right guaranteed by Art.16 of the Constitution of India; and secondly that the impugned G.O.No.166, dated 18-3-1998 and the notification dated 20-3-1998 issued pursuant thereto imposing a condition that only local distilleries can participate, has no nexus with maximization of revenue and that

therefore the action of the respondents 1 and 2 is discriminatory, arbitrary and unconstitutional.

16. It is not in dispute that though a citizen has the fundamental right to carry on any business of his choice, to deal in business in liquor and other intoxicants is not fundamental. But issuing of any licence or permit to deal in business of such type of business, it is only the privilege of the concerned. Conferring of such privilege is up to the discretion of the State. Since such conferment is purely contractual one, any deviation automatically will not confer any right to seek the remedy under Article 226. Unless it is shown the discretion exercised by the authorities concerned is incorrect, illegal and discriminatory and unless any classification made between the persons is not on sound and on reasonable principles it cannot be said that such discretion exercised is violative of Article 16 of the Constitution of India. We will first deal with the question whether the writ petitioners have a fundamental right to carry on business in liquor. It was strongly contended by the learned counsel for the writ petitioners that a citizen has fundamental right to trade or business in liquor and the State can only place reasonable restrictions on the said right in the interests of general public by law made for the purpose under Article 19(6) of the Constitution and that restriction cannot be discriminatory or arbitrary. The question that falls for our consideration is whether a monopoly for the manufacture, trade or business in liquor can be created in favour of the State and whether reasonable restrictions under Article 19(6) of the Constitution can be placed only by Act of Legislature or by a subordinate legislation as well. For the purpose of answering this it is necessary to refer to the relevant provisions of the Constitution, which have a bearing on the subject.

Article 19(1)(g) provides that all citizens shall have the right to practice any profession or to carry on any occupation, trade or business. This right conferred by the aforesaid provisions is circumscribed by the provisions of clause (6) of the very article, which reads thus:

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to, _

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

17. From a reading of Article 19(1)(g) read with Art. 19(6), it spells out a fundamental right of the citizens to practice any profession or to carry on any

occupation, trade or business so long as it is not prohibited or is within the framework of the regulation, if any, if such prohibition or regulation has been imposed by the State by enacting a law in the interests the general public. It cannot be disputed that certain professions, occupations, trades or businesses which are not in the interests of the general public may be completely prohibited while others may be permitted with reasonable restrictions on them. For the same purpose, viz., to subserve the interests of general public, the reasonable restrictions on the carrying on of any profession, occupation, trade, etc., may provide that such trade, business etc., may be carried on exclusively by the State or by a Corporation owned or controlled by it. The right conferred upon the citizens under Article 19(1)(g) is thus subject to the complete or partial prohibition or to regulation, by the State. However, under the provisions of Article 19(6) the regulation and the imposing of conditions have to be in the interest of the general public. Under Article 301 trade, commerce and intercourse through out the territory of India shall be free, subject to the other provisions. The right given by Article 301 to freely carry on trade, commerce and intercourse through the territory of India is undisputedly subject to the same restrictions as is the right under Article 19(1)(g). Apart from the restrictions placed on the right under Article 301, by the provisions of Articles 19(6), 47, 302 and 303, the provisions of Article 304 also place such restrictions on the said right. So do the provisions of Article 305, so far as they protect existing laws and laws creating State monopolies. The provisions of the aforesaid articles, so far as they are relevant for our purpose, read together, therefore, make the position clear that the right conferred by Article 19(6) is not absolute. It is subject to restrictions imposed by the other provisions of the Constitution.

We may now refer to the relevant authorities cited at the Bar. In *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, the Supreme Court held:

"In order to determine the reasonableness of restrictions envisaged by Article 19(6), regard must be had to the nature of the business and the conditions prevailing in that trade. These factors would differ from trade to trade and no hard and fast rule concerning all trades can be laid down. It cannot also be denied that the State has the power to prohibit trades, which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community."

In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, the Supreme Court while dealing with the question whether manufacture and sale of country liquor is

a fundamental right of a citizen or a body and the scope of Article 16 of the Constitution in dealing with the grant of licenses, held as follows:

"There is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Art. 16. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention that Art. 16 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article. But, while considering the applicability of Art. 16 in such a case, the Court must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licenses for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licenses for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide."

In the case of State of Tamil Nadu and others Vs. M/s. Sanjeetha Trading Co. and others, the Supreme Court dealing with the provisions of Clause-3 of the Tamil Nadu Timber (Movement Control) Order, 1982 on movement of timber outside the State and interpreting the provisions of Articles 301 and 302 of the Constitution, held as follows:

"The framers of the Constitution while saving under Art. 301 that trade, commerce and intercourse throughout the territory of India shall be free were quite conscious of the fact that public interest may require such freedom to be curbed or curtailed and that is why under Art. 302 of the Constitution, Parliament was empowered to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest by law."

In view of the law laid down by the Supreme Court it can safely be concluded on this aspect that there is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. The restriction cannot, therefore, be regarded as being unreasonable if the authority imposing such restriction has the power to do so. Whether the Policy of the State

imposing a condition that only distilleries located in the State of A.P. can participate for the supply of liquor and wine of categories A, B and C was conducive to public convenience or not is a matter entirely for the Government to judge and it is not for the Court to substitute its opinion with that of the authority which is in the best position having regard to its knowledge of local conditions, to appraise the situation. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. The learned counsel appearing for the writ petitioners contend that eliminating the writ petitioners from participating in the auction and allowing the local distilleries to supply liquor and wine is an unreasonable classification between the citizen and therefore the same is violative of Article 16 of the Constitution. To support their contention the writ petitioners placed reliance on a decision of the Supreme Court in the MUNICIPAL CORPORATION OF GREATER BOMBAY vs. T.A. DEOKUMAR AIR 1989 SCC 249, wherein the Supreme Court held as follows:

"There is no intelligible differentia for the classification by way of college wise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each college from those excluded from such classification. By such classification or college wise institutional preference, merit has been sacrificed; far less it has been preferred. When the university is the same for all these colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same university, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Article 16. So, the impugned rules are discriminatory and do not satisfy the test of reasonable classification and, as such, cannot be sustained."

Contending that the Government cannot choose to exclude persons by discrimination, the learned counsel for the writ petitioners placed reliance on a decision of the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, . The Supreme Court interpreting the provisions of Articles 32, 226, 16, 19, 21 and 398 held as follows:

"The State which has the right to trade has also the duty to observe equality. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must

enter into a contract with him."

The learned counsel for the writ petitioners adverting to their argument that the procedure followed by the respondents authorities in granting the licence to the local distilleries is not fair and open and they have exercised their power for extraneous reasons, relied upon a judgment of the Supreme Court in *Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others*, , wherein it is held thus:

"Whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be transparent, fair and open. While a bona fide error or error of judgment would not certain matter, any abuse of power for extraneous reasons would expose the authorities concerned, whether it is the Minister for Excise or the Commissioner of Excise, to appropriate penalties at the hands of the courts."

The decisions cited by the writ petitioners have no application to the case on hand.

18. The learned counsel for the writ petitioners argued that the elimination of the claim of the writ petitioners from participating in the tender process itself is creating a discrimination between the citizens by the State and that the action of the State involves the element of arbitrariness. It should be borne in mind that the elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trade which all could carry on. The provisions of the law cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade, which could be carried on by all persons, is entrusted by law to one or more persons to the exclusion of the general public.

19. Dealing with the question whether the Sate has exclusive right to manufacture and sell liquor or to impose restrictions in the trade or business in liquor the Supreme Court in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, , held as follows:

"We, therefore, hold that dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restrictions on the said right, in public interest."

It is also well settled in the case of *KHODEY BREWING & DISTILLING INDUSTRIES LTD. Vs. STATE OF TAMIL NADU* (AIR 1980 Mad. 124). A Division Bench of the Madras High Court while dealing with the question whether the State's direction as to purchase by its Corporation the Indian made foreign spirits from the manufacturers within the State is tainted with irrationality, held as follows:

"Two learned Judges of the Supreme Court in *Sat Pal and Co. and Others Vs. Lt.*

Governor of Delhi and Others, , in dealing with the applicability of Art. 19(6) observed that the undisputed position that now emerges is that, there is no fundamental right to do trade or business in intoxicants."

The Madras High Court in the said case further held:

"All these decisions do not deal with the point as to whether the State while dealing with its exclusive privilege in relation to intoxicants, it would be, in the eye of law, a trade or commerce or intercourse? If what state does with regard to intoxicants, is neither trade nor commerce nor intercourse, then there is no question of invoking Art. 301."

It was also held in paragraph-24 as follows:

" Once it is made out that trafficking in liquor is not inherently lawful and it being a privilege and not a right, and which would be within the regulatory measures of the State while dealing with intoxicants; it cannot be characterized as a "trade or business or intercourse" within the meaning of Art. 301, and therefore part XIII of the Constitution would have no relevance regarding it."

The learned Judges further held thus:

"Before concluding, some of the aspects which have been focused by the learned counsel for the petitioner, required to be mentioned. He submits that, by confining to the five licensed units for the off-take of the requirements of the 2nd respondent, which runs into several crores of rupees, it results in several crores of rupees, being siphoned off by those units to the detriment of public interest, and in turn lends to corruption at high levels on which public debate is now going on in this State, and that even in the Legislature, disclosures have been made, as found in the counter-affidavit of the States having suffered loss of not less than Rs.100 crores in a year, since the inception of the 2nd respondent. He submits that, nothing but public interest is involved in the affairs of the 2nd respondent, which is functioning under the guidance of the 1st respondent, as provided in R.16."

In Tata Cellular Vs. Union of India, dealing with the power of the Court to review the policy decision of the Government in the matter of contract, invitation of tender and refusal of tender following its earlier decision in Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, the Supreme Court held as follows:

" The principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Art. 16 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Art. 16, if the Government

tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since "the power of judicial review is not an appeal from the decision the court cannot substitute its own decision. Apart from the fact that the court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the court would interfere. It is not the function of the Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

In *NAGENDRANATH BORA Vs. COMMISSIONER OF HILLS DIVISION AND APPEALS*, the appeals arose out of the orders passed by the Revenue Authorities under the provisions of Eastern Bengal and Assam Excise Act, 1910. The dispute was between the rival claimants who had tendered for the settlement of country spirit shops. While dealing with the matters in question the Constitution Bench of five learned Judges of the Supreme Court observed by referring to a case in *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, and the observations made therein that no one had an inherent right to establish liquor shops. When the State by public notice invites candidates for settlement to make their tenders and in pursuance of such a notice a number of persons make such tenders, each one makes a claim for himself in opposition to the claims of the others, and the public authorities concerned have to choose from amongst them. The question whether an administrative authority on such occasions functions merely in an administrative or quasi-judicial capacity must be determined on an examination of the statute and its rules. The Court held that the authorities cannot be said to pass purely administrative orders which were beyond the ambit of High Court's power of supervision and control.

20. The learned single Judge tried to support his decision on the basis of the observations made in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, . In our view the following observations of the Supreme Court in the above decision disentitle the writ petitioners to seek the relief, which is sought in the writ petitions.

" This Court neither in the case of *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, nor in the case of *SYNTHETICS AND CHEMICALS LTD. Vs . STATE OF U.P.* has held that the State cannot prohibit trade or business in potable liquor. The observations made in *K.K.NARULA* case (supra) that a citizen has a fundamental right to trade or business in liquor are to be understood, as explained above, to mean only that when the State does not prohibit the trade or business in liquor, a citizen has the right to do business in it subject to the restrictions and limitations placed upon it. Those observations

cannot be read to mean that a citizen has an unqualified and an absolute right to trade or business in potable liquor. This position in law is explained by this Court also in the case of *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, . The decision in the second *SYNTHETICS AND CHEMICALS LTD.* (supra) case also cannot be read to mean that the Court in that case has taken the view that a citizen has a right to trade or business in potable liquor. That decision is confined to trade or business in industrial alcohol, which is legitimately used for industrial purpose and not for consumption as an intoxicating drink. The Court has also there not taken any exception to the right of the State to place reasonable restrictions on the trade or business even of industrial alcohol to prevent its diversion for the use in or as intoxicating beverage."

The Supreme Court further observed:

"The last contention in these groups of matters is whether the State can place restrictions and limitations under Article 19(6) by subordinate legislation. Article 13(3)(a) of the Constitution states that law includes "any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law". Clauses (2) to (6) of Article 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing the restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g) we are concerned in the present case with clause (6) of Article 19. It will be apparent from the said clause that it only speaks of "operation of any existing law insofar as it imposes...." "from making any law imposing" reasonable restrictions in question only by a law enacted by the legislature. Hence the restriction in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in *res extra commercium* and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the State. We, therefore, answer the question accordingly."

Article 19(1)(g) has conferred a right of choosing to carry on a trade, business or any profession the same is controlled by reasonable restrictions. Such restrictions cannot be held as illegal as long as such restrictions are regulatory in nature."

In view of the above judicial pronouncements the irresistible conclusion is that the State has the right to carry on a particular trade or business and the law conferred on such right to deal in trade or business either by itself or through its statutory agency or the individual to deal with it or to discontinue such practice, which the authorities or the executive feels reasonable and in the interest of the State and general public. Even Rule-8 of the G.O. relied upon by the writ petitioners and the notification does not confer an absolute right to an individual citizen or the persons or the distilleries situated in the State, who are entered

into contract. Discontinuing the procedure contemplated in Rule-8 of the G.O. and proposing to have a new policy or new procedure cannot be said to be illegal or arbitrary as long as the authorities have such powers, which are conferred by the Legislature. If one feels to challenge the procedure by which his contractual right has been affected, his remedy is not under Article 226, but he can ventilate his grievance before the appropriate forum available under law. The policy adopted or the classification made is neither unreasonable nor illegal or irrational. The duty of the Court is not to suggest the policies or express its opinion to do a particular type of trade or business as the same is left to the decision of the authorities concerned. Mere submitting an application seeking for grant of licence or permit to start a distillery does not confer any right. The learned single Judge should have dismissed the writ petitions on the ground that the period for which the permission sought was expired. If the above principles were canvassed before the learned single Judge, in our view, the learned single Judge would not have taken the view in favour of the writ petitioners. If the findings of the learned single Judge are examined in the light of the principles mentioned above, the irresistible conclusion is that the view taken by the learned single Judge is incorrect.

21. The submission of the writ petitioners that the respondents-authorities are acted arbitrarily and irrationally in shutting out the outside distilleries from participating in the auctions and creating monopoly in favour of the distilleries functioning within the State, cannot be accepted in view of the law laid down by the Apex Court on a number of occasions as mentioned above. In view of the facts and circumstances also which have been elaborately put forth by the respondents-authorities in their counter affidavits, it cannot be said that the Government has acted either in arbitrary manner nor any right of the writ petitioners is violated. It may be that there is scope for the writ petitioners to expect permission to participate in the auction for the year 1998-99 to supply the Indian Made Liquor by virtue of the practice that has been adopted by the Government for the year 1997-98, but that itself is not sufficient to invoke the principles of equality, unless and until it is substantiated that the action of the Government is unreasonable, not bona fide and is arbitrary. On the other hand the averments made in the counter affidavits reveal that the policy is changed for the year 1998-99 on the ground of a larger public interest viz., that the large quantity of non-duty paid liquor was being smuggled into the State resulting in the loss of revenue and for proper implementation of excise policy during the year 1998-99 and for controlling the sale of non-duty paid liquor in the State. Therefore, assuming that there is scope for the writ petitioners to expect permission to participate in the auction to supply the liquor, the same cannot be termed as reasonable in view of change in the policy of the Government for a reasonable and fair cause which cannot be subjected to any sort of criticism, and hence the writ petitioners cannot invoke the principles of equality and plead that the action of the authorities as arbitrary.

22. The learned counsel for the writ petitioners lastly contended that the

notification dated 20-3-1998 issued by the 2nd respondent pursuant to G.O.Ms.No.166, dated 18-3-1998 calling for sealed tenders only from the local distilleries situated in Andhra Pradesh who are possessing a valid excise licence issued by the 3rd respondent for the supply of Indian Liquor and wine of categories A, B & C, is detrimental to the rights of the writ petitioners and as a consequence of the modified policy, the writ petitioners would suffer grave economic injury and be disabled from fulfilling their supply targets of Indian Liquor and Wine of A, B & C category founded on the permits issued to them by the State Government for the previous year. It is further contended that the policy as is announced in G.O.Ms.No.166, dated 18-3-1998 is inconsistent with the earlier policy of the Government and therefore the modification of the policy is inoperable as being inconsistent with the earlier policy.

23. It is to be seen that as it has been noticed by the Government that large quantities of non-duty paid liquor was being smuggled into the State and this issue was raised in the Assembly, the Government vide G.O.Ms.No.99, dated 24-2-1998 constituted a Cabinet Sub-Committee to suggest steps to be taken for proper implementation of the prohibition policy and for controlling the sale of non-duty paid liquor (IML) in the State, that after taking the unanimous opinion expressed by various parties, groups and associations and also the report of the Cabinet Sub-committee recommending import of A,B & C liquor to curb the menace of non-duty paid liquor, the new policy has been taken by the Government and the said policy has been the product of unanimous opinion expressed by various parties, groups and associations and also the recommendations made by the Cabinet Sub-Committee. Therefore, we are unable to identify any element of irrationality, perversity, arbitrariness, consideration of irrelevant factors or eschewing of relevant factors in the formulation of the new policy warranting interference. The policy of the Government particularly in the area of economic matters and apportionment of limited resources available with the State in relation to a larger demand upon them, is an area predominantly declared by the text and structure of the Constitution to the other two branches of the State viz., the Legislature and the Executive. The intervention by the judiciary in these areas is limited only to the extent of invalidation on the ground of perversity or irrationality. The limits of judicial review in these areas has fallen for consideration before the superior Courts on more than one occasion and the matter is no longer *res integra*. A few of the recent pronouncements on the subject read as follows:

In *Delhi Science Forum and others Vs. Union of India* and another, the doctrine of judicial restraint in the area and judicial interference with the policy decisions of the executive authority has been enunciated by the Supreme Court in the following terms:

"The Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and

opinions which may be shared and believed by citizens of the country including the representatives of the people in the Parliament. But that has to be sorted out in the Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered a vigilant parliament. Courts have their limitations - because these issues rest with the policy matters for the nation. No direction can be given or is expected from the Courts unless while implementing such policies there is violation of infringement of any of the constitutional or statutory provisions. The new telecom policy was placed before the Parliament and it shall be deemed that the Parliament has approved the same. This court cannot review and examine as to whether said policy should have been adopted. Of course whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court."

In P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, , the Supreme Court formulated a decision in the areas of intervention of the judiciary in respect of the policy decisions taken by the executive authority, which reads as follows:

"It would, therefore, be clear that grant of a licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary to the public interest, it would be entitled to revise the policy and lay down new policy. The court therefore would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilization of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitions have no vested or approved right for the issuance of the permits on the MEE or NQE nor the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme."

In Krishnan Kakkanth Vs. Government of Kerala and others, the limits of the judicial review in a matter of scrutiny into executive policy has been considered by the Supreme Court and held in the following terms:

"To ascertain unreasonableness and arbitrariness in the context of Art. 16 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Courts should avoid embarking on uncharted ocean of public policy."

24. The observations made and the law laid down by the Supreme Court in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, is a clear answer to the contentions raised by the writ petitioners and the findings, observations and suggestions of the learned single Judge are unsustainable. In our considered view the writ petitioners could not make out any case warranting interference of this Court. Hence the order passed by the learned single Judge is liable to be set aside and is accordingly set aside.

In view of the settled principles on the subject we may now summarise the law on the contentions raised before us, as under:

- (i) 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 grant the licenses to the citizens for the said purpose by charging fees. This can be done under Article 19(6) of the Constitution or even otherwise;
- (ii) 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 reserving to itself the right to grant licenses to do trade or business in the same, to others;
- (iii) The State can adopt any mode of selling the licenses for trade or business with a view to maximise its revenue;
- (iv) The State can carry on trade or business in potable liquor notwithstanding that it is intoxicating drink and Article 47 of the Constitution enjoins to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor, which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business;

(v) While allotting or entrusting any work or contract, the State can make its own choice and entrust its contract or other work, but the said choice shall not be violative of Article 16 of the Constitution of India but on the other hand it shall be reasonable; and

(vi) The judicial review in the matter of policy decision is restricted only to find out whether there is any illegality in the decision-making process but not in the decision.

For the foregoing reasons the writ appeals filed by the State are allowed, but in the circumstances, without costs.

25. Consequent upon allowing of the writ appeals filed by the State, the four writ petitions -- W.P.Nos. 8464, 9288, 11621 and 11609 of 1999 - filed challenging the excise policy of the Government for the year 1999-2000, are dismissed. There shall be no order as to costs.