

(2015) 03 KL CK 0290

In the High Court Of Kerala

Case No : W.A. Nos. 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1563, 1564, 1590, 1600, 1629, 1630, 1635, 1638, 1640, 1641, 1643, 1646, 1654, 1655, 1664, 1667, 1668, 1677, 1678, 1681, 1684, 1685, 1686, 1687, 1693, 1704, 1738, 1739, 1740, 1746, 1747, 1748, 1749, 1750,

Xavier's Residency

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 13(3)(a), 14, 19, 19 (1), 19(1)
Penal Code, 1860 (IPC) — Section 478, 479, 480, 481, 482

Citation : (2015) 03 KL CK 0290

Hon'ble Judges : K.T. Sankaran, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : N. Venkataraman, Senior Advocate, A. Sudhi Vasudevan and K. Pushpavathi, for the Appellant; Kapil Sibal, Senior Advocate, K.P. Dandapani, Advocate General and Tom K. Thomas, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J—The Abkari Policy for the year 2014-15 and the consequent amendment of the Foreign Liquor Rules were challenged in a batch of Writ Petitions by two star, three star, four star and heritage hotel owners and unclassified hotel owners. The learned Single Judge as per the judgment dated 30.10.2014 in Xavier's Residency Vs. State of Kerala, (2014) 4 KLT 419 , dismissed the Writ Petitions in so far as they related to the challenge against Abkari Policy 2014-15 by the hotels classified as two star and three star and by hotels having no classification. The learned Single Judge set aside that part of the Abkari Policy, to the extent it excludes hotels having four star and heritage category from the eligibility to be granted FL-3 licence under the Foreign Liquor Rules, as violative of Article 14 of the Constitution. The consequential amendments to the Foreign Liquor Rules as well as the proceedings of the Excise

Commissioner cancelling the licence of such hotels were also set aside. The Abkari Policy 2014-15 was sustained in all other respects.

2. Challenging the judgment of the learned Single Judge, the two star, three star and unclassified hotel owners filed Writ Appeals. Similarly, Government of Kerala filed Writ Appeals against the judgment of the learned Single Judge in so far as it relates to the setting aside of the policy and consequential amendment in respect of four star and heritage category hotels. In some of the Writ Petitions, the "Madyavirudhasamithi" and in one of the Writ Petitions Sri. T.N. Prathapan, a Member of the Legislative Assembly, got themselves impleaded. At the stage of Writ Appeals, the Confederation of Accredited Tour Operators got themselves impleaded in W.A. No. 1554 of 2014.

3. The Abkari Act, 1077 was initially passed by His Highness the Maharaja of the erstwhile State of Cochin on 5th August, 1902. The Act was later on extended to the entire State of Kerala by Act 10 of 1967. The Foreign Liquor Rules were framed in exercise of the powers conferred by the Abkari Act to deal with the grant of licence to vend Indian Made Foreign Liquor (IMFL). Licences to conduct retail sale in liquor in bottles were being auctioned by the State to private parties, earlier in point of time. Later, that system was changed and the privilege of conducting retail sale in liquor was granted exclusively to the Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. (for short "Beverages Corporation"), Kerala State Civil Supplies Corporation Ltd. and the Kerala State Cooperative Consumer's Federation Ltd. The licensees holding Foreign Liquor Licence are entitled to purchase the stock of foreign liquor from the Beverages Corporation. The Government used to formulate abkari policy from time to time. Based on those policies, amendments were brought to the Abkari Act and the Foreign Liquor Rules. In the year 1992, the Government decided to restrict grant of FL3 licence to only hotels having two star and above classification. In the year 1996, the Government framed an abkari policy banning sale of arrack in the State with effect from 1.4.1996. In 2002, an amendment was brought to Rule 13 of the Foreign Liquor Rules restricting grant of FL3 licence to only hotels having three star and above classification. As per notification dated 20.2.2002, the last proviso to sub-rule (3) of Rule 13 of the Foreign Liquor Rules was substituted by the following proviso: "provided that no new licences under this rule shall be issued." Again with effect from 1.4.2002, the policy was changed and the ban for the issue of fresh licences was removed by deleting the proviso which was inserted by the notification dated 20.2.2002. In continuation of the policy of the Government to reduce sale and distribution of liquor, abkari policy of 2011 was announced restricting issue of FL3 licences to only hotels having four star and above classification. By the Abkari Policy 2014-15, and by the amendment of Rule 13 of the Foreign Liquor Rules (G.O.(P)No.141/2014), issue of FL3 licence was restricted to hotels which have obtained five star classification. The first paragraph of sub-rule (3) of Rule 13 was substituted as follows:

"(3) Foreign Liquor 3 Hotel (Restaurant) license.--License in this form may be

issued by the Excise Commissioner under orders of Government, in the interest of promotion of tourism in the State, to hotels which have obtained Five Star, Five Star Deluxe classifications from the Ministry of Tourism, Government of India, where the privilege of sale of foreign liquor in such hotels has been purchased on payment of an annual rental of Rs. 23,00,000 (Rupees Twenty-three lakhs only). However, no such license shall be issued to hotels if located within 200 (two Hundred) metres from any educational institution, temple, church, mosque, burial ground or scheduled caste/scheduled tribe colony. The applicant shall produce from the Abkari Workers' Welfare Fund Inspector, a Certificate to the effect that he has remitted before the date of application for license/renewal of license, the arrears of contributions if any payable up to the 31st day of December of the preceding year."

Proviso 6, 7 and 8 to Rule 13(3) before the amendment were as follows:

"13. Licences for possession, use or sale:....

(1).....

(2).....

(3).....

Provided also that the licences of any bar hotel that remain defunct for more than six months either during the period of validity of the licence or after its expiry, shall not be renewed.

Provided further that all existing licences not having the above classification and are functional as on 31st March, 2007 shall be regularised.

Provided also that all FL-3 licences not having the requisite star classification and are functional during 2009-2010 shall be regularized."

The 6th proviso was amended by the aforesaid amendment of 2014 and the following proviso was substituted:

"Provided also that all licences which have been renewed temporarily from 1st April, 2014, other than those of the hotels having Five Star classifications shall be cancelled."

By the same amendment, the 7th and 8th provisos to sub-rule (3) of Rule 13 were omitted. In sub-rule (3A), which provided that "notwithstanding anything to the contrary in these rules hotels having not less than three star classification and possessing a licence in form FL3, are permitted to purchase foreign made foreign liquor direct from the Customs Bonded Warehouse, on payment of an additional annual rental of Rs. 20,000/- (Rupees twenty thousand only) and an application to the Excise Commissioner for that purpose", the words "not less than three" were substituted by the word "five".

4. Based on the Abkari Policy 2014-15, G.O.(MS) No. 139/2014 dated 22.8.2014 was issued. The Foreign Liquor Rules were amended as per notification dated

27.8.2014.

5. The amendment to the Foreign Liquor Rules as per the notification dated 20.2.2002, by which it was provided that no new licences shall be issued, was challenged before the High Court of Kerala in a batch of Writ Petitions. One of the questions involved in the Writ Petitions was whether the application for licence should be considered with reference to the state of affairs on the date of amendment or on the date of application. The High Court held that the date of application is the relevant criterion. The High Court also held that the substituted proviso to Rule 13(3) was invalid as it was violative of the main rule. It was also held that the amendment to the Rules by the notification dated 20.2.2002 was bad as it was made only to get over the judgment of the High Court directing fresh consideration of the application. On appeal to the Supreme Court, the Supreme Court in *State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc.*, (2010) 2 JT 660 : (2010) 2 SCALE 839 : (2010) 4 SCR 1 , raised two questions, namely, (1) Whether the application for grant of FL3 licence should be considered with reference to the rules as they existed when the application was made or in accordance with the rules in force on the date of consideration; and (2) Whether the amendment to Rule 13(3) of the Foreign Liquor Rules substituting the last proviso was valid. The Supreme Court answered question No. 1 that consideration of the application for FL3 licence should be with reference to the rules/law prevailing or in force on the date of consideration of the application by the Excise authorities. Consequently, the direction issued by the High Court that the application for licence should be considered with reference to the Rules as they existed on the date of application was not sustained. As regards question No. 2, the appeals filed by the State were allowed in part and the appeals filed by the applicants for licence were dismissed with certain clarifications. A submission was made before the Supreme Court on behalf of the State Government that Rule 13(3) was further amended with effect from 1.4.2002 to implement a new policy and by the said amendment, the minimum eligibility for licence was increased from two star categorisation to three star categorisation and the ban for issue of fresh licence was removed by deleting the proviso which was inserted by the amendment dated 20.2.2002. The Supreme Court held that if the State, on a periodical assessment, changed the policy, it may amend the Rules by adding, modifying or omitting any rule, to give effect to the policy. (See: *State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc.*, (2010) 2 JT 660 : (2010) 2 SCALE 839 : (2010) 4 SCR 1 .

6. As stated above, in pursuance of the Abkari Policy framed in 2011-12, the Foreign Liquor Rules were amended. As per the amendment, the minimum eligibility for getting licence was increased from three star categorisation to four star categorisation and a distance rule was also incorporated for getting licence. The amendments were challenged in a batch of Writ Petitions before the High Court of Kerala. The High Court struck down the amendment as unconstitutional. The State of Kerala challenged the judgment of the High Court before the Supreme Court. In *State of Kerala and Others Vs. B. Surendra Das Etc.*, AIR

2014 SC 2762 : (2014) AIRSCW 3968 : (2014) 3 SCALE 421 , the Supreme Court allowed the appeals filed by the State in part and it was held thus:

"41. For the reasons stated above we allow these appeals in part and hold as follows:

(i) The judgment rendered by the Division Bench is set-aside to the extent it interferes with the amendment brought in the year 2011. The deletion of three star hotels from the category of hotels eligible for FL3 licenses under R.13(3) is held valid.

(ii) As far as the amendment brought in 2012 introducing the distance rule by way of addition of Rule (3E) in Rule 13(3) is concerned, the same is held to be bad in law. The judgment of the High Court is confirmed to that extent.

(iii) The State Government will not proceed to deny FL3 licenses to hotels with a classification of four star and above by resorting to their deletion under R.13 (3) until the report of the one-man commission is received, and until it takes action against the non-standard restaurants which have been permitted under the sixth and seventh proviso of Rule 13(3).

(iv) No order is necessary on the Contempt Petitions and they stand disposed of.

(v) All parties will bear their own costs."

7. The Supreme Court in *State of Kerala and Others Vs. B. Surendra Das Etc.*, AIR 2014 SC 2762 : (2014) AIRSCW 3968 : (2014) 3 SCALE 421 held as follows:

"33. There are two amendments which are under challenge. We will have to deal with these two amendments in the light of the factual scenario and the law governing the same. As far as the deletion of three star hotels is concerned, we do have a judgment of this Court in the case of *B.Six Holiday Resorts (supra)*, wherein, the previous deletion of two star hotels from the eligibility of FL-3 licences was upheld by this Court. It has been submitted by the respondents that the plea under Art. 14 was not specifically canvassed when the matter was considered and decided. In this behalf we have already referred to paragraphs 30 and 31 of this judgment. In paragraph 30 this Court has held that promotion of tourism should be balanced with general public interest. Paragraph 31 permits a periodical reassessment of policy, and holds that if policy is not open to challenge the amendment of the rules to effect the policy can also not be challenged. This being the position the grievances made by the hoteliers with respect to the deletion of three star hotels, and to insist on a bar licence, cannot be sustained, on this ground. Deletion of three star hotels falls in the same genre as the deletion of two star hotels, which was done earlier. This Court has upheld the deletion of two star hotels in the said judgment. This being the position the State cannot be faulted for deletion of three star hotels after a periodical revision of the policy."

8. The Abkari Policy of 2011-12 also provided that from 2013-14 financial year

onwards bar licences would be given only to five star hotels.

9. In Surendra Das's case, the Supreme Court held that the power of the State Government to bring about the necessary reform, by modifying the Rules cannot be disputed, provided it can be justified on the touchstone of the correlation between the provision and the objective to be achieved. If that correlation is not established, surely the rule will suffer from the vice of arbitrariness, and therefore will be hit by Article 14. In Surendra Das's case, the Supreme Court also held that if the Government is really serious about reducing the consumption of liquor, it should also take steps to reduce its own shops and depots and in any case should not open new ones. It was also held thus:

"39..... In view of the very high consumption of liquor, which the State Government intends to reduce, what we expect is that the Government should consider not issuing further FL-1 licences. If it is not possible for the Government to reduce the existing FL-1 shops, with respect to which it enjoys a monopoly, it is of no use for it to direct the private sector alone to function in a particular manner. The Government must as well behave in conformity with the mandate of Art.47."

10. When Surendra Das's case was pending before the Supreme Court the Government appointed a One Man Commission as per G.P.(MS) No. 12/2013/TD dated 23.1.2013 for making recommendations on parameters for formulating future Abkari Policy of the Government. Thereafter, the terms of reference were prescribed by G.O.(MS) No. 28/2013/TD dated 4.3.2013. An additional item in the terms of reference was included by G.O.(MS) No. 113/2013/TD dated 24.5.2013. When the Surendra Das's case was pending before the Supreme Court, the One Man Commission (Justice M.Ramachandran, a former Judge of the High Court of Kerala) had not submitted the final report. In Surendra Das's case, the Supreme Court noticed that the State Government had appointed a One Man Commission for reviewing the Abkari Policy. The Supreme Court expressed the hope that the Commission would take into consideration the hard realities which are reflected in the report of the CAG and make necessary recommendations.

11. The issues about which the recommendations of the One Man Commission were made, included the following among other:

"1. Measures/criteria/parameters for formulating a comprehensive Abkari Policy, in the background of the decisions of the High Court in W.A. No. 470/2012 and connected cases, and the interim order in SLP(C) No. 26241-26243/2012 of the Supreme Court, with the ultimate objective of achieving the target of "Liquor-free Kerala".

2. Suggest measures/means for reducing the consumption and availability of liquor, such as stipulating distance limits for opening liquor outlets in the vicinity of educational institutions, playgrounds, etc. between bar hotels, timing of operation of bar hotels.

3. Review of licences already issued under FL Rules, and suggest measures for legal remedies to overcome the difficulties in achieving the objectives in reducing the availability and consumption of liquor, including the crucial "date for consideration of application".

4. Review the yardstick/criteria for issue of FL3 license for the promotion of tourism, in the context of the guidelines issued by the Government of India, and the present structure of classification of hotels.

5. Review of the FL3 licences currently in operation without 2 star classifications, and suggest measures for streamlining the procedures for renewal/transfer of licenses/reconstitution of partnership and shifting of these bars.

6. Review of the current Abkari Act/Rules to make it in tune with the objectives of the Abkari Policy.

7.....

8. Suggest measures to introduce liquor with low alcohol content, with the objective of mitigating health hazards.

9.....

10..... "

12. The One Man Commission published public notice through print media, to make the general public aware of the proposal of the Government and to provide an opportunity to the interested sectors to express their views/opinion/concern or apprehensions, as the case may be. The report discloses that the One Man Commission received large number of letters/representations from persons from various walks of life. The One Man Commission conducted sittings at various places in the State after due publication. All the relevant papers, judgments and orders were made available to the One Man Commission. The One Man Commission, inter alia, reported thus:

"39. The dream for liquor free Kerala as at present may be too ambitious as lessons about prohibition era is difficult to be forgotten. Kerala is one of the smallest States in our country and it shares boundary with Karnataka and Tamil Nadu. On the western side it is skirted by Arabian Sea. We have Mahe, a Centrally administrated hamlet inside our boundary. Even if manufacturing and sale is discontinued, the enforcement of such a prohibition will be illusory as long as there is no restriction for production and sale of liquor in the neighbouring States or areas. This, therefore, leads to the natural inference that isolated prohibition will be a misadventure. There will be loss of revenue, but adverse effects of consumption and violation of law will be rampant.

40. By recording this opinion, it is not as if I am unaware of the strong movement against liquor and drugs, that is prevalent in the State. I have no opinion that liquor in any form is good for the individual or the community. About 14% of the alcohol manufactured in the country is stated to be flowing to this

State. It is about 30 crores of litres, in addition to toddy tapped. The ill effects of liquor is all pervading. Percentage of suicidal death are highest here, motor accidents rate again is one of the highest, family courts have ever increasing burden. Corruption at every level has increased. It is a mystery why the degradation happens in a State where literacy is almost cent percent. Again in Kerala reported aggression towards women and children is on increase. Crime rates are above average. All of this have substantial contribution from the liquor bottle, coupled with uncensored visual media. Hospitalisation for diseases connected with liquor consumption is on the rise, and addicts prefer drinks with high rate of alcoholic content. It is a style as well as life style. Kerala is front runner, and other States are not far behind in consumption rates. So much so, authentic projection of ASSOCHAM shows that from the current consumption of 6500 million liters per year, it will reach 10,000 million liters by the year 2015. It is a disturbing situation, since an addict to intoxicating substances gets himself secluded from the society, and indirectly spoils the life of his dependants.

41. However, while discussing about the liquor policy to be adopted, one has to be realistic. As the liquor business is strictly controlled by the State, it would be easier to consider the methods suggested below for curbing the disadvantages arising out of the situation, considering the fact that the habit of consumers cannot easily be eradicated. In the circumstance that the last two generations had been enjoying liquor with the least of restrictions, the policy should be rested on the following principles:

1. Good quality of liquor is to be made available to the consumers with lesser alcoholic content.
2. Easy availability should be restricted by confining FL3 licences to Hotels with at least 3 star facilities.
3. Unauthorised import of spirit by liquor lobbies, especially operating with the assistance of distilleries outside the State should be completely stopped by enforcement.

Making available liquor of lesser alcoholic content and classification of bars are specific items dealt with later in this report.

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43. As far as FL3 premises are concerned, the youth have monopoly there, followed by middle aged groups. Quite a number of persons, apparently in the lower rungs of the society wait for opening of the bar in the morning, since for them to start their daily work, boost by spirit is a necessity. The crowd in the bar increase by noon and there is dull period between 3 PM to 5.30 PM. Business picks up thereafter. Most of the bars, it seems have more than one outlet, but the crowd always is in the lower priced dispensing area, where seating facilities are rudimentary, smoking very common and the general din disturbing. Neither there is billing nor service of food. Comparatively in the air conditioned areas of

the bar hotel, the customers are well within their own control and the treatment received is far better. On the whole, misbehaviour at the bar appears to be very rare. I found no credit sales. It could definitely be stated that addiction to liquor drains the individuals their day's earnings, especially among the lower positions. The well to do might be visiting the bar out of their habit and seeking companionship. It is evident that they behave better and observe responsibility in the matter of consumption of spirit.

44. In the bar of 4 stars and 5 star hotels, at the time of my visit, I did not see any crowd at any time of the day. The behaviour of the patrons never was found as objectionable. The evening hours were blessed with patronage, and it was difficult to get seats at peak hours, in the city areas.

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47. The prime argument of those who pleaded for prohibition and especially the women's sector, was about the drain of hard earned money of the bread winner. This ultimately affected the stability of relations, the general health of family members, as also thereby denying and distancing the dependants and children from reaching better avenues in life.....

.....

61..... Consumption of liquor must not be an end in itself for an individual. The habit of presenting all that is earned on a day in the liquor shop and purchasing troubles and self destruction requires to be discouraged by counseling. It was in that context, that recommendations were made for making available standard beverages with lesser percentage of alcohol content and insisting that consumption should be permitted in a congenial atmosphere in a standard bar, which has a minimum of 3 star classification. Those who may not be in a position to visit bars can procure liquor from FL1 outlets, and can have it in the privacy of their home. This by itself will be conducive in reduction of drinking habit, as drinking in public places are prohibited.

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67. Issue No. 6: Review of the Abkari Act and Rules to make it in tune with the objectives of the abkari policy.

The Abkari Policy to be adopted in future years has to be designed with the idea of reducing the level of consumption of intoxicating liquor progressively, and simultaneously encouraging tourism by providing enhanced comfort levels to the tourists who happen to visit Kerala State. The Government is to ensure that good quality of liquor is served through FL1 and FL3 outlets and the alcoholic content of the beverages served is substantially reduced in acceptable levels to minimize the ill-effects that may be caused by liquor intake....."

13. The learned counsel appearing for the writ petitioners (appellants in majority

of the Writ Appeals) relied on paragraphs 62 and 64 of the One Man Commission report, which read as follows:

"62. The position as existing also appears to be that the Government no more encourages grant of FL3 licences to bar hotels, which have only rudimentary facilities and conveniences. As hinted earlier, the present difficulty of uncontrolled drinking habit might be traceable to the policy decisions adopted, whereunder outlets which were functioning as liquor vending places with no infrastructure or facilities were ordered to be "regularised". Resultantly the licences issued are being renewed every year as a matter of course. While dealing with Issue No. 3, I have ventured to recommend that after the period of current licenses in respect of such bar hotels, renewal need be thought of only if they have eligibility of at least 3 star or even 4 star classification. This is because some of the bar hotels could be equated to the proverbial arrack shops in style and function. As a measure of sympathetic approach, if it is not possible for such bar hotels to acquire standards as are expected of, the licenses could be kept in hibernation for a specified period and they could be reissued on securing certification from the competent authority. In no cases the licenses are to be renewed on a provisional basis. This would reduce indiscriminate drinking. Liquor with lower alcohol content also should be introduced to minimise health hazards.

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64. The present process of classification of hotels is on well defined terms and I do not see any reason for upsetting the system or leaving it to one individual's discretion. On the whole, as tourism promotion is one of the main reasons for grant of FL3 licenses, there need not be any reservation about a liberal approach in the grant of licenses to hotels, with adequate facilities viz., at least 3 star classification. I would recommend for employing parameters, that all the pending applications in respect of hotels, which have valid certification of 3 star and above, should be issued with FL3 licenses, in case they satisfy all the other preconditions mandatorily required to be met. There should not be any "counter sales" permitted and this alone will have a restrictive effect."

14. According to the State, the new Abkari Policy 2014-15 was formulated on 22.8.2014 and G.O.(MS) No. 139/2014 was issued on the same day, on issuing the policy. The amendment of the Foreign Liquor Rules was notified on 27.8.2014. For the sake of convenience, the Abkari Policy 2014-15 is extracted below:

"1. The government viewing seriously the social-health problems which arose from the increasing alcohol drinking habit in the Kerala society. Considering the social feeling against this calamity Government has issued Abkari Policy for 2011-12 with strict suggestion as per 1st reference. But the rules framed there under has been set aside by the Hon: High Court of Kerala as per reference (3). Pursuant to that, the Government could not implement completely the Abkari Policy 2012-13 as per reference (2). Government has filed S.L.P.(C) No.

26241-26243/2012 before the Hon: Supreme Court. Apart from that, a retired High Court Judge Justice M.Ramachandran has been appointed as One Man Commission to submit the recommendation regarding the complete Abkari Policy in future and decided as per reference 4 that not to grant fresh FL-3 Licenses until a decision is taken on the recommendation of one man commission report. The terms of reference of the commission has been fixed by order as per reference 5. The Hon''ble Supreme Court in the Judgement in C.A. No. 3196-3198/2014 filed by the Government, as referred 5th above, ordered as follows:

I. "The Judgment rendered by the Division Bench is set aside to the extent it interferes with the amendment brought in the year 2011. The deletion of three star hotels from the category of hotels eligible for FL-3 Licenses under Rule 13(3) is held valid.

II. As far as the amendment brought in 2012 introducing the distance rule by way of addition of Rule 3 E in Rule 13(3) is concerned, the same is held to be bad in law. The judgment of the Hon''ble High Court is confirmed to that extent.

III. The State Government will not proceed to deny FL3 licenses to hotels with classification of four star and above by resorting to their deletion under rule 13(3) until the report of the One-Man commission is received, and until it takes action against the non-standard restaurants which have been permitted under the sixth and seventh proviso of Rule 13(3)."

The Excise Commissioner has submitted recommendations to renew the FL-3 Licenses from 1.4.2014 including the 418 non-standard hotels mentioned in the above order of the Hon''ble Supreme Court. However, due to the code of conduct declared by the Election Commission on 5.3.2014, it was unable to declare the abkari policy on the recommendation submitted by the One-Man commission on 6.3.2014. Therefore, at this juncture, granted permission as per 9th referred above, for the renewal of FL-3 licenses of Hotels, except 418 non standard bar hotels on provisional basis subject to the following conditions as ordered below:

I. The renewal of FL-3 licenses of hotels, except 418 non standard bar hotels mentioned in the judgment of the Supreme Court, be provisionally done subject to the permission of the Election Commission and subject to the conditions mentioned below.

a. The renewal shall be purely provisional or ad interim subject to it's cancellation or withdrawal before it's date of completion.

b. The renewal shall be subject to the decision to be taken by the Government as a matter of policy on the recommendation of the One-Man Commission.

c. The renewal will be subject to the decision taken by the Government immediately after the cessation of the model code of conduct for election.

d. Full rental as per the current fee will be collected with a rider that the

licensees shall be entitled for proportionate reduction in the unexpired period.

II. The issue of renewal of the FL-3 licenses of the non-standard bar hotels mentioned in the Supreme Court order is deferred till the receipt of recommendations of Secretary (Taxes) on the report of One-Man Commission and its consideration by the Government. The Secretary (Taxes) will submit the report within one month."

2. Aggrieved by the delay in declaring the abkari policy, the Kerala Bar Hotel Association and others filed W.P.(C) 10006/2014, 10841/2014 and in those cases as per order 10th referred above, the court has ordered that the abkari policy of the Government shall be declared within one month. In those cases the Government has filed petitions for extension of time and as per order dated 9.7.2014 time has been extended till 12.8.2014. Apart from that in W.P.(C) No. 23235/2013 filed before the Hon''ble High Court by the Indian Medical Association, as per order 11th referred above, the request in Ext. P3 in that W.P. (C) for not to grant or renew FL-1, FL-3 licenses within 200 meters distance from hospitals and to include the hospitals in the distance limit as contemplated in the Foreign Liquor Rules, will be considered by the Government at the time of framing Abkari Policy.

3. As per the interim order in W.P.(C) No. 11964/2014 of the Hon''ble High Court, it is directed to take decision considering the recommendation of Justice M.Ramachandran Commission report regarding the assertion of identity card as age proof for buying and selling of liquor and timing of bars.

4. In the order issued by the State Human Rights Commission, it is observed that not to differentiate between licensees, not to infringe fundamental rights, not to violate law, not against Wednesbury's Principles and permitted to open the bars having Two Star facility and to close the bars which do not have the Two Star facility.

5. As per order dated 14.8.2014 of the Hon''ble High Court in W.A. No. 1121/2014 filed by Sri. K.V. Sadanandan and others against the single bench decision in above said Bar Hotel Association cases, in order to submit report, the inspections have being conducted in 418 non-standard bar hotels pursuant to direction to the Excise Commission as per reference 14th above. The Government has to submit the inspection report of the Excise Commissioner, Government's opinion on it and its Abkari Policy 2014-15, before the Hon''ble High Court on 26.8.2014.

6. The Government has convinced that in spite of the various measures adopted by the Government to reduce the production and availability of liquor, still liquor continues as a social evil in the Kerala society. This adversely affects our nation, family and individuals in various manners. Government feels that more actions are necessary at this juncture. Therefore, Abkari Policy has to be declared considering the orders of Hon''ble Supreme Court, High Court and Human Rights Commission and also the recommendations in report of Justice M.Ramachandran

Commission.

7. The Government being convinced the fact that in order to achieve the goal of "Liquor-Free Kerala", strict and urgent measures are to be adopted, the Abkari Policy 2014-15 is hereby declared subject to the following criteria.

1. Hereinafter Bar licenses will be issued only to 5 star hotels. The licenses of existing bar hotels which are functioning on the basis of provisional renewal of licenses except the licenses of 5 star hotels will be cancelled. The Government has decided not to renew the licenses of 418 non-standard bar hotels mentioned in the Judgment of the Supreme Court.

2. 10% of outlets out of 338 FL-1 outlets of Kerala State Beverages Corporation and 46 outlets of Consumer Fed will be closed each year from 2nd October, 2014 onwards.

3. The sale of high strength alcoholic liquor through Beverages Corporation will be gradually reduced.

4. In order to rehabilitate the employees who loose their job due to the closing of bar and to rehabilitate the persons who are alcoholically addicted a special plan namely "Punarjani 2030" will be commenced. For that purpose, 5% Cess will be imposed on the liquor which selling through the K.S.B.C.

5. The Liquor-Free propaganda program will be strengthen in the society at large and especially in educational institutions.

6. All Sundays will be declared as dry-day. This will implement from the Sunday of 5th October, 2014.

7. The traditional toddy tapping business will be protected and job security will be ensured for toddy tappers.

8. In order to rehabilitate the employees of closing bars and employees engaged in the job of affixing stickers, measures will be adopted. Kerala Alcohol Education Research, Rehabilitation & Compensation Fund (KAERCF) Fund will be formed in order to protect the retrenched employees. The said fund will be utilized for the following purposes such as making propaganda against drinking of alcohol, for collection of data regarding this matter, to protect those who destroyed themselves by alcohol consumption, rehabilitation of the persons who lost job. The fund for this purpose will also be found out from public.

9. To implement the order urgently, the Excise Commissioner, K.S.B.C. Managing Director have to take measures to submit the recommendations urgently to the Government."

15. We heard Senior Advocate Sri. Kapil Sibal, the learned Advocate General Sri. K.P. Dandapani and Special Government Pleader Sri. Tom K. Thomas for the State, Senior Advocates Sri. N. Venkataraman, Sri. Dushyant Dave, Sri. Aryama Sundaram, Sri. C.C. Thomas, Sri. K. Ramakumar and Sri. S. Sreekumar,

Advocates Sri. George Poonthottam, Sri. N. Raghuraj, Sri. Shaji T.A., Sri. Sivan Madathil, Sri. Roy Chacko, Sri. Sudhi Vasudevan, Sri. T. Harikrishnan and Sri. Madhu for the appellants/writ petitioners and Advocates Sri. Basil Attipetty, Sri. Kaleeswaram Raj and Sri. George Abraham for the interveners. For the sake of convenience, the bar hotel owners who challenged the judgment of the learned Single Judge are hereinafter referred to as writ petitioners, the State as State and the interveners as such.

16. The appeals which are being disposed of by us can be categorized into five. (1) The hotel owners who come among the 312 hotel owners who got provisional renewal as per the Government Order dated 2.4.2014 for the abkari year 2014-15. (2) The appeals filed by the State challenging the judgment of the learned Single Judge to the extent it struck down the exclusion of four star and heritage hotels. (3) The hotel owners among the 418 bar hotel owners (65 two star classified hotels and 353 unclassified hotels), whose licences were not renewed from 1.4.2014. (4) The Writ Appeals filed by the State in respect of nine three star hotels and one four star hotel challenging the judgment of another learned Single Judge directing the licences to be renewed subject to the policy which gains judicial approval. (5) Writ Appeals filed by the State challenging the judgment of another learned Single Judge by which the State was directed to grant fresh FL3 licence to four star and heritage hotels.

17. When the Writ Appeals filed by the writ petitioners came up for admission, another Division Bench granted an interim order dated 31.10.2014 by which the status quo as on 29.10.2014, the day immediately preceding the date of pronouncement of the judgment by the learned Single Judge, was directed to be maintained. The said interim order was extended from time to time and lastly until further orders.

18. The contentions put forward by the writ petitioners are summarized as follows: The judgment of the Supreme Court in *State of Kerala and Others Vs. B. Surendra Das Etc.*, AIR 2014 SC 2762 : (2014) AIRSCW 3968 : (2014) 3 SCALE 421 and *State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc.*, (2010) 2 JT 660 : (2010) 2 SCALE 839 : (2010) 4 SCR 1 relate to grant of fresh licences and those judgments would not be applicable to the existing licencees. The Supreme Court in *Surendra Das's* case did not make any distinction between two star, three star etc. What is highlighted in the judgment of the Supreme Court in *Surendra Das's* case is with respect to the hygienic conditions in the bar hotels. During the pendency of the Writ Petitions, out of the 418 bar hotels, 120 hotels were inspected by a team of officers and they found that hygienic conditions were complied with by the hotels. The inspection was on the basis of an interim order passed by a Division Bench of this Court. The inspection could not be completed since in the meanwhile the Abkari Policy 2014-15 came into force. Subsequent to the Abkari Policy 2014-15, the Government granted FL3 licence for vending beer and wine to 374 hotels out of 418 hotels. The policy makers have now made their mind clear after the amendment of the Abkari

Rules permitting grant of FL11 licences.

19. The writ petitioners submitted that every policy must have a basis, reason and a cause. It is submitted that the policy can be impugned on the ground of arbitrariness, discrimination, want of materials and non-consideration of materials. The policy was issued on the basis of the One Man Commission Report, but the policy reflects an entirely different theme altogether. No reasons are stated by the policy maker to deviate from the suggestions made by the One Man Commission. The report of the Secretary (Taxes) was called for after the One Man Commission submitted the report. But the report of the Secretary (Taxes) was not referred to at all in the policy. The decision in Surendra Das's case was not at all on the ground of classification of hotels as three star, four star etc., but it was on the basis of the hygienic conditions prevailing in the hotels. No data was made available before the policy maker as to the percentage of sale of alcohol in the two star, three star and five star hotels. It is clear from the judgment of the Supreme Court in Surendra Das's case that 70% of the sale of alcoholic drinks in the State is through the outlets of Beverages Corporation. The State must realize the will of the people and the freedom of the citizen. The State's activity of dealing with alcoholic drinks through the outlets of Beverages Corporation is a commercial activity. Sale and consumption of alcoholic drinks is not prohibited in the State. The State does not claim any monopoly on the sale of alcoholic drinks. If so, the amendment of the Rule should be tested on the touchstone of Article 14.

20. The writ petitioners also contended that if the object of the State was to reduce consumption of liquor in the State, the Government ought to have closed the 383 FL1 shops run by it. The sale figures (in terms of value) of various category of Foreign Liquor Licences submitted by the Government before the Supreme Court in Surendra Das's case was relied upon by the writ petitioners. The said sale figures are the following:

21. The writ petitioners submitted that the concept of interest of promotion of tourism was introduced in Rule 13 of the Foreign Liquor Rules for the first time in the year 1994. If the object is to promote tourism, how could the Government make a differentiation between two star, three star, four star and five star? There must be an intelligible differentia and it should be to further the object sought to be achieved. By permitting only five star hotels to run bars, it is abundantly clear that the object sought to be achieved, namely, promotion of tourism, cannot be achieved at all. If so, the amendment can be considered as making hostile discrimination and therefore, it is violative of article 14 of the Constitution of India. It is submitted that the learned Single Judge found that there is discrimination and therefore, the only question was whether it was hostile discrimination. The test to be applied is whether there are two distinct classes and if so, whether the classification subserves the object sought to be achieved. Since the object sought to be achieved is promotion of tourism, it is clear that the classification is arbitrary and unreasonable. Rule 13(3) having not been

amended altering the object, namely, promotion of tourism, the Government cannot be heard to say that by deleting three star and four star, the said object would be achieved. Though there is no fundamental right to a citizen to sell potable liquor as held in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, (1994) 6 JT 588 : (1994) 4 SCALE 528 : (1995) 1 SCC 574 : (1994) 4 SCR 477 Supp , there can be a limited fundamental right and it can be achieved by challenging the discrimination and arbitrariness.

22. A total number of about 20000 employees working in bar hotels were registered under the Employees Provident Fund Act and Scheme. There are unregistered workers and persons who get employment indirectly, whose total number comes to more than five times the number of the regular employees. It is submitted that after the policy came into existence, twelve employees working in bar hotels committed suicide.

23. The writ petitioners submitted that there cannot be discrimination between persons qua the objective sought to be achieved. If the objective is to prohibit drinking in public places, how can there be a discrimination among two star, three star, four star and five star? The writ petitioners submit that as per the Government decision dated 2.4.2014, the report of the Secretary (Taxes) was called for. The report dated 16.5.2014 was submitted by the Secretary (Taxes). Reference was made by the Secretary (Taxes) to the One Man Commission report. The policy now under challenge does not even refer to the report made by the Secretary (Taxes). There was total non-application of mind which makes the policy arbitrary and unreasonable. If the policy is arbitrary, it is liable to be struck down. The consequent amendment of the Rule also should be struck down.

24. It is submitted by the writ petitioners that the existing licencees and their licences constitute a different class. What was considered in *Surendra Das's* case was the question of granting fresh licences. It is submitted that the finding of the learned Single Judge in paragraph 104 of the judgment that the contention that classification between the existing two star and three star hotels and new ones is discriminatory and violative of Article 14 of the Constitution is no longer res integra in view of the dictum of the Supreme Court in *Surendra Das's* case, is unsustainable since that question was never considered by the Supreme Court in *Surendra Das's* case.

25. The writ petitioners submitted that the policy is liable to be struck down for the following reasons: (a) It was issued without any bona fides. (b) The policy is in-logical. (c) There was total non-consideration of the relevant materials including the judgment of the Supreme Court in *Surendra Das's* case, the One Man Commission report and the report submitted by the Secretary (Taxes). It was submitted that the Chief Minister declared the policy all of a sudden and it was not passed in any of the meetings of the Council of Ministers. Meetings of the Council of Ministers were held on 21.8.2014 and 27.8.2014. The Policy is dated 22.8.2014. It was not discussed in the meeting of the Council of Ministers on 21.8.2014. G.O.(MS) No. 139/2014 was issued on 22.8.2014. The notification

in respect of the amendment of the Rule was issued on 27.8.2014, the date on which meeting of the Council of Ministers took place. Hence it is clear that the Policy was not properly formulated. In the meeting of the Council of Ministers on 27.8.2014, the Policy was ratified. That it was ratified, by itself, is a clear indication that the Policy was not properly formulated.

26. It is submitted that in the State of Kerala there are only 20 five star hotels. An average of more than twenty lakhs of tourists come to Kerala per year. The total number of rooms available in five star hotels in the State would be 1400 and the maximum number of persons who could be accommodated in five star hotels would be below 5000. The district wise foreign tourists arrival in the State of Kerala during the year 2013-14 was published by the Department of Tourism, Government of Kerala. In Kannur, Malappuram, Palakkad, Wayanad, Thrissur and Pathanamthitta Districts, there is no five star hotel. Therefore, there is no point in saying that granting FL3 licence to five star hotels is only to cater to the need of promotion of tourism.

27. It is submitted that, in fact, the Abkari Policy 2014-15 runs counter to the judgment of the Supreme Court in Surendra Das's case. In paragraph 39 of the judgment in Surendra Das's case, observations were made regarding the closure of shops and depots run by the Beverages Corporation. But the Government have not closed their shops and depots. It is submitted that more than 80% of the sale of alcoholic drinks is through the State's outlets. The One Man Commission was appointed as per an executive order in compliance with the Court's decisions. Therefore, the Government is bound to follow the recommendations made by the One Man Commission in his report. The One Man Commission report was not discussed in the meeting of the Council of Ministers.

28. The submissions made on behalf of the State, inter alia, are the following: The State has not prohibited consumption of liquor altogether nor its manufacture or supply. The State has only put restrictions in the matter of situs of consumption of liquor. The Government took note of the fact that the youth in the Kerala are becoming addicted to liquor and the State wants to avoid the same. Alcoholic drink is a deleterious substance and it is res extra commercium. Therefore, Article 19(1)(g) of the Constitution of India is not attracted at all. It is submitted that there is also no violation of Article 14 of the Constitution since, there is no classification among a particular class and, therefore, there is no discrimination. No citizen has any fundamental right to trade in potable liquor. A citizen has also no fundamental right to consume alcoholic drinks at public places of his choice. Restrictions are in the domain of the State and that is reflected in the Policy. The Courts would be slow to interfere with the policy decisions. Restricting something, which the society does not approve, cannot be said to be offend the fundamental rights. The data collected by the One Man Commission and the report as such would justify the policy decision taken by the Government, though the Government did not fully accept the recommendations made by the One Man Commission. The Government is not bound to accept the

One Man Commission report. The Government can deviate from it. In the present case, the One Man Commission report was relied on by the Government to formulate its policy and the recommendations as such may not be quite relevant in formulating the Policy. The Government is free to introduce a policy in a phased manner. It is not necessary that the said policy should be made applicable to the whole of the State of Kerala at the same time and in a single stroke. It is not proper for the Court to make any investigation as to the correctness of the reasons stated in the policy or what prompted the policy maker to arrive at such conclusions. The present policy is in continuation of the earlier abkari policies. When one considers the various policies over the years, it would be abundantly clear that the Government was trying to reduce the number of bars and outlets for the sale of liquor and the ultimate aim is the reduction of consumption of alcoholic drinks. The decision of the Supreme Court in Surendra Das's case is an authority for the proposition that the discrimination theory will not apply as between three star and four star or as between two star and three star. The Court will not interfere with a policy decision of the Government unless there is gross abuse of power or where no reasonable man would have arrived at the conclusion which was arrived at in the policy. In economic and social spheres, decisions are essentially ad-hoc and experimental and it is for the policy maker to consider all the relevant inputs and formulate a policy taking into account the overall object which is sought to be achieved. Economic matters are extremely complicated and Court is not the venue for considering all those aspects. The wisdom of the Council of Ministers in arriving at a proper decision cannot be doubted. It is submitted by the learned senior counsel appearing for the State that there is no scope for interference in the policy and the finding of the learned Single Judge, in so far as it relates to four star hotels, requires interference.

29. The learned counsel appearing for the interveners submitted that introduction of a new policy in a phased manner is essentially within the plenary power of the State and it cannot be impugned under Article 14 of the Constitution of India. The contention that the writ petitioners have invested lot of funds is not a relevant criterion for formulating the policy or in considering the question whether the policy satisfies the test of reasonableness. Alcoholic drink is a deleterious substance affecting the health of the general public. The Government thought it fit to reduce consumption of alcohol for the betterment of the society and it cannot be faulted at all based on the individual rights of bar hotel owners. There is no case for the writ petitioners that a classification was made within a particular class and, therefore, the challenge of the policy under Article 14 of the Constitution of India is unsustainable. The learned counsel appearing for the interveners also submitted that the words used in Rule 13, namely, "in the interest of promotion of tourism" cannot be read in isolation. The rule does not indicate that if more is the availability of liquor, the more will be the progress of tourism. Such an interpretation cannot be made as long as the Rule does not contain such an object. There is no dichotomy between executive decision and a policy decision nor there is dichotomy between a policy and a rule.

Once the materials are taken into account and the same is approved/ratified by the cabinet and once the same is translated into a rule, a further examination of the manner in which the policy decision is taken is not relevant. A policy or a rule cannot be examined with reference to the manner in which the materials are examined by the Government. It is also submitted that after the present policy, the consumption of liquor has been drastically reduced. When consumption is reduced, there will be a compulsion to reduce the production also. Therefore, there need not be a specific policy decision to reduce production as it naturally follows. The learned counsel also referred to the answers given by the Honourable Minister for Home and Vigilance at the floor of the house that there was a reduction of crimes (after consumption of alcohol) by 30% after closure of some of the bars and there was a reduction of 31% of cases relating to domestic violence.

30. The learned counsel for the appellant in W.A. No. 1600 of 2014 submitted that in W.P.(C)No.23353 of 2014, from which the said Writ Appeal arose, there is a challenge against Rule 36 of the Foreign Liquor Rules as arbitrary, unconstitutional and ultra vires Section 26 of the Abkari Act. The learned counsel submitted that Rule 36 gives absolute power to the Excise Commissioner, which is unregulated by any procedure or guidelines. The learned counsel appearing for the appellant in W.A. No. 1640 of 2014 submitted that clause (e) of Section 26 cannot be read in isolation and it should be read ejusdem generis to clauses (a) to (d).

31. The learned Government Pleader produced for our perusal the details of foreign liquor shops and bar hotels as on 31.3.2014 and as on 31.3.2015 and the same are extracted below:

"DETAILS OF FOREIGN LIQUOR SHOPS AS ON 31.03.2014

32. Learned counsel appearing for the parties cited several decisions. We will be referring to the relevant decisions in the succeeding paragraphs of the judgment.

33. In *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, (1994) 6 JT 588 : (1994) 4 SCALE 528 : (1995) 1 SCC 574 : (1994) 4 SCR 477 Supp , a Constitution Bench of the Supreme Court held:

"54. It will thus be obvious that all the decisions except the decision in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, AIR 1967 SC 1368 : (1967) 3 SCR 50 have unanimously held as shown above that there is no fundamental right to carry on trade or business in potable liquor sold as a beverage. As pointed out above, the proposition of law which is put in a different language in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, AIR 1967 SC 1368 : (1967) 3 SCR 50 has been explained by the subsequent decisions of this Court including those of the Constitution Benches. The proposition of law laid down there has to be read in conformity with the proposition laid down in that respect by the other decisions of this Court not only to bring comity in the judicial decisions but also to bring the law in conformity

with the provisions of the Constitution. The fundamental rights conferred by our Constitution are not absolute. Article 19 has to be read as a whole. The fundamental rights enumerated under Article 19(1) are subject to the restrictions mentioned in clauses (2) to (6) of the said article. Hence, the correct way to describe the fundamental rights under Article 19 (1) is to call them qualified fundamental rights. To explain this position in law, we may take the same illustration as is given in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, AIR 1967 SC 1368 : (1967) 3 SCR 50 . The citizen has undoubtedly a fundamental right to carry on business in ghee. But he has no fundamental right to do business in adulterated ghee. To expound the theme further, a citizen has no right to trafficking in women or in slaves or in counterfeit coins or to carry on business of exhibiting and publishing pornographic or obscene films and literature. The illustrations can be multiplied. This is so because there are certain activities which are inherently vicious and pernicious and are condemned by all civilised communities. So also, there are goods, articles and services which are obnoxious and injurious to the health, morals, safety and welfare of the general public. To contend that merely because some activities and trafficking in some goods can be organised as a trade or business, right to carry on trade or business in the same should be considered a fundamental right is to beg the question. The correct interpretation to be placed on the expression "the right to practise any profession, or to carry on any occupation, trade or business" is to interpret it to mean the right to practise any profession or to carry on any occupation, trade or business which can be legitimately pursued in a civilised society being not abhorrent to the generally accepted standards of its morality. Human perversity knows no limits and it is not possible to enumerate all professions, occupations, trades and businesses which may be obnoxious to decency, morals, health, safety and welfare of the society. This is apart from the fact that under our Constitution the implied restrictions on the right to practise any profession or to carry on any occupation, trade or business are made explicit in clauses (2) to (6) of Article 19 of the Constitution and the State is permitted to make law for imposing the said restrictions. In the present case, it will be clause (6) of Article 19 which places restrictions on the fundamental right to do business under Article 19(1)(g). These restrictions and limitations on fundamental right are implicit and inherent even in the fundamental rights spelt out in the American Constitution, although they are not explicitly stated as in our Constitution by clauses (2) to (6) of Article 19..... The correct way, therefore, to read the fundamental rights enumerated under Article 19(1) of our Constitution is to hold that the citizens do not possess the said rights absolutely. They have the said rights as qualified by the respective clauses (2) to (6) of Article 19. That is apart from the fact that Article 47 of the Constitution enjoins upon the State to prohibit consumption of intoxicating drink like liquor, which falls for consideration in the present case and, therefore, the right to trade or business in potable liquor is subject also to the provisions of the said article. Whether one states as in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, AIR 1967 SC 1368 : (1967) 3 SCR 50 that the

citizen has a fundamental right to do business but subject to the State's powers to impose valid restrictions under clause (6) of Article 19 or one takes the view that a citizen has no fundamental right to do business but he has only a qualified fundamental right to do business, the practical consequence is the same so long as the former view does not deny the State the power to completely prohibit, trade or business in articles and products like liquor as a beverage, or such trafficking as in women and slaves. This Court in Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, AIR 1967 SC 1368 : (1967) 3 SCR 50 has not taken such view.

55. The contention that if a citizen has no fundamental right to carry on trade or business in potable liquor, the State is also injuncted from carrying on such trade, particularly in view of the provisions of Article 47, though apparently attractive, is fallacious. The State's power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others. Prohibition is not the only way to restrict and regulate the consumption of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the State does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6) of the Constitution.

56. The contention further that till prohibition is introduced, a citizen has a fundamental right to carry on trade or business in potable liquor has also no merit. All that the citizen can claim in such a situation is an equal right to carry on trade or business in potable liquor as against the other citizens. He cannot claim equal right to carry on the business against the State when the State reserves to itself the exclusive right to carry on such trade or business. When the State neither prohibits nor monopolizes the said business, the citizens cannot be discriminated against while granting licences to carry on such business. But the said equal right cannot be elevated to the status of a fundamental right.

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

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

limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

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

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

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

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

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

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the

citizens who are qualified to carry on the trade or business.

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

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

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

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

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

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

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64. 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 on the exercise of the rights conferred by Article 19(1)(g). There is nothing in this provision which makes it imperative to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions 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."

34. In *State of Kerala and Others Vs. Kandath Distilleries*, (2013) 3 AD 565 : AIR 2013 SC 1812 : (2013) 3 JT 275 : (2013) 3 RCR(Criminal) 494 : (2013) 2 SCALE 789 : (2013) 6 SCC 573 : (2013) AIRSCW 1640 : (2013) 2 Supreme 111 , the Supreme Court held thus:

"27..... It is trite law that a Court of law is not expected to propel into "the uncharted ocean" of the State's Policies. The State has the power to frame and reframe, change and re-change, adjust and readjust policy, which cannot be declared as illegal or arbitrary on the ground that the earlier policy was a better and suited to the prevailing situations."

35. The learned counsel for the writ petitioners relied on the decision of the Supreme Court in *State of Maharashtra and Another Vs. Indian Hotel and Restaurants Assn. and Others*, (2013) 5 ABR 222 : AIR 2013 SC 2582 : (2013) 3 RCR(Criminal) 455 : (2013) 9 SCALE 47 : (2013) 8 SCC 519 , which is popularly known as "Dance Bar case", wherein the Supreme Court held thus:

"116. We fail to see how any of the above observations are of relevance in the present context. The so called distinction is based purely on the basis of the class of the performer and the so called superior class of audience. Our judicial conscience would not permit us to presume that the class to which an individual or the audience belongs brings with him as a necessary concomitant a particular kind of morality or decency. We are unable to accept the presumption which runs through Sections 33A and 33B that the enjoyment of same kind of entertainment by the upper classes leads only to mere enjoyment and in the case of poor classes, it would lead to immorality, decadence and depravity. Morality and depravity cannot be pigeonholed by degrees depending upon the classes of the audience. The aforesaid presumption is also perplexing on the ground that in the banned establishments even a non-obscene dance would be treated as vulgar. On the other hand, it would be presumed that in the exempted establishments any dance is non-obscene. The underlying presumption at once puts the prohibited establishments in a precarious position, in comparison to the exempted class for the grant of a licence to hold a dance performance. Yet at the same time, both kinds of establishments are to be granted licenses and regulated by the same restrictions, regulations and standing provisions.

117. We, therefore, decline to accept the submission of Mr. Subramaniam that the same kind of dances performed in the exempted establishments would not bring about sexual arousal in male audience as opposed to the male audience frequenting the banned establishments meant for the lower classes having lesser income at their disposal. In our opinion, the presumption is elitist, which cannot be countenanced under the egalitarian philosophy of our Constitution. Our Constitution makers have taken pains to ensure that equality of treatment in all spheres is given to all citizens of this country irrespective of their station in life. {See: Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, AIR 1951 SC 41 : (1951) 21 CompCas 33 : (1950) 1 SCR 869 , Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, AIR 1958 SC 538 : (1959) 1 SCR 279 and The State of Uttar Pradesh Vs. Kaushaliya and Others, AIR 1964 SC 416 : (1964) 4 SCR 1002 . In our opinion, sections 33A and 33B introduce an invidious discrimination which cannot be justified under Article 14 of the Constitution.

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119. The next justification for the so called intelligible differentia is on the ground that women who perform in the banned establishment are a vulnerable lot. They come from grossly deprived backgrounds. According to the appellants, most of them are trafficked into bar dancing. We are unable to accept the aforesaid submission. A perusal of the Objects and Reasons would show that the impugned legislation proceed on a hypothesis that different dance bars are being used as meeting points of criminals and pick up points of the girls. But the Objects and Reasons say nothing about any evidence having been presented to the Government that these dance bars are actively involved in trafficking of women. In fact, this plea with regard to trafficking of women was projected for the first time in the affidavit filed before the High Court. The aforesaid plea seems to have been raised only on the basis of the reports which were submitted after the ban was imposed. We have earlier noticed the extracts from the various reports. In our opinion, such isolated examples would not be sufficient to establish the connection of the dance bars covered under section 33A with trafficking. We, therefore, reject the submission of the appellants that the ban has been placed for the protection of the vulnerable women.

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123. In our opinion, the activities which are obscene or which are likely to deprave and corrupt those whose minds are open to such immoral influences, cannot be distinguished on the basis as to whether they are performing in 5 star hotels or in dance bars. The judicial conscience of this Court would not give credence to a notion that high morals and decent behaviour is the exclusive domain of the upper classes; whereas vulgarity and depravity is limited to the lower classes. Any classification made on the basis of such invidious presumption is liable to be struck down being wholly unconstitutional and particularly contrary

to Article 14 of the Constitution of India."

36. The learned senior counsel appearing for the State relied on paragraphs 134, 135 and 136 of the Dance Bar Case, which read as follows:

"134. We are undoubtedly bound by the principles enunciated by this Court in the aforesaid cases, but these are not applicable to the facts and circumstances of the present case. In *Khoday Distilleries Ltd. (supra)*, it was held that there is no fundamental right inter alia to do trafficking in women or in slaves or to carry on business of exhibiting and publishing pornographic or obscene films and literature. This case is distinguishable because of the unfounded presumption that women are being/were trafficked in the bars. *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, (2003) 10 JT 485 : (2003) 10 SCALE 202 : (2004) 11 SCC 26 : (2003) 5 SCR 930 Supp dealt with liquor trade, whereas the present case is clearly different. The reliance on *New York State Liquor Authority v. Bellanca* (452 US 714 (1981)) is completely unfounded because in that case endeavour of the State was directed towards prohibiting topless dancing in an establishment licensed to serve liquor. Similarly, *Regina v. Bloom (supra)* dealt with indecent performances in a disorderly house. Hence, this case will also not help the appellants. Therefore, we are not impressed with any of these submissions. All the activities mentioned above can be controlled under the existing regulations.

135. We do not agree with the submission of Mr. Subramaniam that the impugned enactment is a form of additional regulation, as it was felt that the existing system of licence and permits were insufficient to deal with problem of ever increasing dance bars. We also do not agree with the submissions that whereas exempted establishments are held to standards higher than those prescribed; the eating houses, permit rooms and dance bars operate beyond/below the control of the regulations. Another justification given is that though it may be possible to regulate these permit rooms and dance bars which are located within Mumbai, it would not be possible to regulate such establishments in the semi-urban and rural parts of the Maharashtra. If that is so, it is a sad reflection on the efficiency of the Licensing/Regulatory Authorities in implementing the legislation.

136. The end result of the prohibition of any form of dancing in the establishments covered under Section 33A leads to the only conclusion that these establishments have to shut down. This is evident from the fact that since 2005, most if not all the dance bar establishments have been literally closed down. This has led to the unemployment of over 75,000 women workers. It has been brought on the record that many of them have been compelled to take up prostitution out of necessity for maintenance of their families. In our opinion, the impugned legislation has proved to be totally counter productive and cannot be sustained being ultra vires Article 19(1)(g)."

37. In *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, AIR 2001

SC 1447 : (2001) 4 JT 31 : (2001) 2 SCALE 534 : (2001) 3 SCC 635 : (2001) 2 SCR 630 : (2001) AIRSCW 1284 : (2001) 2 Supreme 459 , the Supreme Court held that it is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. The mere fact that the policy would hurt business interests of a party does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to the judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

38. In *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, (2001) 7 AD 581 : AIR 2001 SC 3887 : (2001) 3 ARBLR 438 : (2001) 8 JT 84 : (2001) 6 SCALE 390 : (2001) 8 SCC 491 : (2001) AIRSCW 3847 : (2001) 7 Supreme 65 , it was held by the Supreme Court that the court will not ordinarily interfere in policy matters since the policy matters are taken based on expert knowledge of the persons concerned and the courts are normally not equipped to question the correctness of a policy decision. It was also held that "this does not mean that the court has to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the materials on record".

39. In *Anjaly Babu and Others Vs. State of Kerala and Others* , a Division Bench of this Court (in which one of us was a member) held that the Government can introduce a policy in a phased manner. It is not necessary that the policy decision should be made applicable throughout the State at one stroke.

40. In *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, AIR 2008 SC 1640 : (2008) 2 JT 639 : (2008) 3 SCALE 45 : (2008) 4 SCC 720 : (2008) AIRSCW 1826 : (2008) 2 Supreme 472 , the Supreme Court held that all decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated, this inevitably entails special treatment for special situations. The State must therefore be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the court should not, unless compelled by the statute or by the Constitution, encroach into this field, or invalidate such law.

41. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, AIR 2002 SC 350 : (2002) 108 CompCas 193 : (2002) 1 CompLJ 205 : (2001) 10 JT 466 : (2002) 1 LLJ 550 : (2001) 8 SCALE 541 : (2002) 2 SCC 333 : (2002) 35 SCL 182 : (2002) 2 SCT 12 : (2001) AIRSCW 5135 : (2001) 8 Supreme 660 , the Supreme Court held that the courts have consistently refrained from interfering with economic decisions as it has been recognized that economic expediencies lack adjudicative disposition and unless the economic decision, based on

economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of authority. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. It is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

42. In *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*, AIR 2006 SC 1489 : (2006) 4 CompLJ 4 : (2006) 3 JT 235 : (2006) 3 SCALE 1 : (2006) 3 SCC 434 : (2006) 67 SCL 107 : (2006) AIRSCW 1392 : (2006) 3 Supreme 49 , the Supreme Court held thus:

"104. A policy decision, as is well known, should not be lightly interfered with but it is difficult to accept the submissions made on behalf of the learned counsel appearing on behalf of the Appellants that the courts cannot exercise their power of judicial review at all. By reason of any legislation whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith.

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107. The parameters of judicial review in relation to a policy decision would depend upon the nature as also the scope and object of the legislation. No hard and fast rule can be laid down therefor. The court normally would not, however, interfere with a policy decision which has been made by experts in view of the fact that it does not possess such expertise."

43. In *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, AIR 2006 SC 2609 : (2006) 6 JT 500 : (2006) 7 SCALE 179 : (2006) 10 SCC 337 : (2006) 3 SCR 631 Supp : (2006) AIRSCW 3601 : (2006) 6 Supreme 372 , it was held that the correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

44. In *Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others*, AIR 2007 SC 1640 : (2007) 5 JT 394 : (2007) 5 SCALE 565 : (2007) 4

SCC 737 : (2007) 5 SCR 7 : (2007) AIRSCW 2497 : (2007) 3 Supreme 855 , the Supreme Court considered the scope of judicial review of governmental policy and held that the courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy, either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available.

45. In Bhavesh D. Parish and Others Vs. Union of India and Another, AIR 2000 SC 2047 : (2000) 101 CompCas 459 : (2000) 3 CTC 178 : (2000) 6 JT 604 : (2000) 4 SCALE 616 : (2000) 5 SCC 471 : (2000) 1 SCR 291 Supp : (2001) 1 UJ 54 : (2000) AIRSCW 1965 : (2000) 4 Supreme 726 , the Supreme Court held:

"26. Moreover in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalization of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all."

46. The Courts may have their own views and personal philosophies about a particular matter covering the policy. That view may sometimes be correct also. But that is not a ground to interfere with a policy formulated by the Government and the courts" view or personal philosophies cannot be a substitute for governmental action in formulating policies.

47. May be, as submitted by the learned counsel for the writ petitioners, the tourism sector may be affected by the reduction in the number of bar hotels and the venues for consuming alcoholic beverages. The policy maker knew well that there will be a steep decline in the matter of collection of revenue by avoiding bar hotels up to five star level. Still, they pursue their policy and their election manifesto was a guiding factor for formulating the policy. Whether the view taken by the Government was correct or not is not amenable to judicial scrutiny. It is also relevant to note that even in the year 1994 licences were issued for private hotels having only four star classification. The decision in 1997 was that the criterion for bar licence should be three star and higher classification, heritage and resort hotels as well as classified restaurants. The decision of 1997 continued till 31.3.2002. On 9.12.2011, three star hotels were deleted from consideration for issuing fresh licences, which led to Surendra Das's case. The One Man Commission report also mentions about the various steps taken over

the years to achieve the object of reducing consumption of liquor. On a consideration of the various policies over the years, it would be clear that the Government was making trial and error methods; and various methods were adopted to attain the final required object that the general public should be free from the grip of alcoholic beverages. The required results were not achieved and the statistics would show that the consumption of alcoholic drinks in the State of Kerala increased day by day. The Supreme Court noticed in Surendra Das's case that consumption of liquor is the highest in the State of Kerala. The One Man Commission reported that about 14% of the alcohol manufactured in India flows to Kerala. All these factors were taken note of by the Government and a policy decision was taken. It is not for us to interpret the policy word by word to find out whether a more feasible view is possible or whether a better policy could be evolved. It is not our duty or function to enter into uncharted realms of policy making and substitute our own views into the well considered policy decision taken by the Government.

48. It is seen from G.O.(P) No. 211/2014/TD dated 30.12.2014 that even after the present policy in question was formulated and sought to be implemented, the Government thought of granting licences in form FL11 to hotels where FL3 licences granted were in force as on 31.3.2014. The relevant portion of G.O. (P) No. 211/2014/TD dated 30.12.2014 reads as follows:

"(11 B) Notwithstanding anything contained in sub-rule (11), a licence in Form FL-11 shall be issued by the Deputy Commissioner of Excise to hotel where an FL-3 licence granted was in force as on 31st March, 2014, on request by the licensee. The licence under this sub-rule shall be issued subject to the following conditions:--

(a) the licensee shall not treat the licence granted under this sub-rule as a renewal of FL-3 licence in his name. The FL-3 licence granted to him earlier shall be deemed to be an FL-11 licence for the purpose of the issuance of licence under this sub-rule and the licence issued under this sub-rule shall be deemed to be renewal of the same.

(b) the licence shall be subject to all the conditions stipulated under an FL-11 licence issued under these rules.

(c) there shall not be any change in the nature, content or scope with respect to the licence or the licensed premises.

(d) the licensee shall employ all the workers who were in his employment in the hotel as on 31st March, 2014.

(e) the licensed premises shall satisfy the standards of hygiene, which shall be certified by the Deputy Commissioner of Excise concerned."

49. It is not in dispute that 374 out of 418 bar hotels got the benefit of G.O.(P) No. 211/2014 and licences were issued to them. Of course, they protested and it was subject to their objection that licences were granted. Even during the

pendency of the Writ Petitions, the Government thought of making changes in the policy and a new policy was evolved, the benefit of which was enjoyed by a large number of bar hotel owners. It is also relevant to note here that the One Man Commission in its report has mentioned about the feasibility of considering the sale of alcoholic drinks of lesser strength in the bar hotels. What is evident from G.O.(P) No. 211/2014 is that the Government accepted that recommendation and evolved a new policy which deviates from the earlier policy to some extent. That also makes it clear that the Government was not adamant and they were inclined to take into account the necessities in life, the requirements, the depletion in revenue and all other relevant factors and evolved policies from time to time.

50. It is submitted by the learned counsel for the writ petitioners that the object of Rule 13(3) being promotion of tourism, any policy which does not subserve that object should be struck down as arbitrary and unreasonable. It is true that Rule 13(3) of the Foreign Liquor Rules states that licences may be issued by the Excise Commissioner under orders of Government, in the interest of promotion of tourism in the State. It cannot be said that promotion of tourism alone should be taken note of; welfare of the people also should be taken note of. If FL3 licence is issued to all types of bar hotels in the State, probably, the revenue may increase and there may be steep increase in the tourism activities. But that alone should not be the criterion for taking regulatory measures under the Abkari Act and the Foreign Liquor Rules. The State has to protect the health and welfare of the people and a balance has to be struck between tourism and health. All relevant inputs were taken note of by the Government while formulating the policy. It is true that no specific mention is made in the policy about the report made by the Secretary (Taxes). The records would reveal that the report of the Secretary (Taxes) was called for after the One Man Commission submitted the report and the said report of the Secretary (Taxes) was made available before the Government. It cannot be assumed that the Government failed to take note of the report of the Secretary (Taxes) and it cannot be a reason for striking down the policy.

51. It is contended by the writ petitioners that the recommendations of the One Man Commission as mentioned in the report were given a go-by by the policy maker. It is submitted that the One Man Commission recommended for raising the standards of non-standard hotels stage by stage and for retaining the three star hotels. It is true that the recommendation made by the One Man Commission was not as such accepted by the Government while formulating the policy. It is also true that the One Man Commission was appointed by the Government while the Surendra Das's case was pending before the Supreme Court. But that does not mean that the Government is bound to accept the One Man Commission's report in its entirety. All the relevant inputs have been made available by the One Man Commission in his report after interviewing several persons, institutions, organisations and making a practical study of several matters. The One Man Commission even visited bar hotels and made a thorough

study of what was the state of affairs in the bar hotels and remarkable data were made available in his report. Based on the same, the Government was justified in taking its own policy decision. Merely on the ground that the Government did not accept the recommendation of the One Man Commission in toto, it cannot be said that the policy is arbitrary or unreasonable or violative of Article 14 of the Constitution of India. The One Man Commission report is only a piece of evidence, a material which the Government could take note of. The Government undertook the laborious task of taking and collecting materials from various sources and analyzing the same. And the Government thought that a former Judge of the High Court would be capable of understanding things as well as men and matters better. The Government gave full respect to the One Man Commission report and various steps were evolved by the Government in the policy. Even making a provision for rehabilitation of the employees is a step taken by the Government on giving due weight to the recommendation made by the One Man Commission. S.R.O. No. 815 of 2014 was issued taking into account the recommendation made by the One Man Commission. Many of the writ petitioners enjoyed the benefit given by the subsequent policy and they had no demur against such policy, which was also based on some of the recommendations made by the One Man Commission. May be that the tourism sector may be adversely affected to some extent, but more important aspect, according to the Government, is the welfare of the people of the State and also the measures to be taken to curtail the menace of increase in the number of persons consuming alcoholic drinks. The One Man Commission reported about the evil and adverse consequences of extensive drinking and drinking at places where there is no hygiene. The One Man Commission noticed that several unclassified hotels were having the standard of only arrack shops. It was also noticed by the One Man Commission that he saw customers waiting for opening the bar hotels early in the morning for their quota. It was noticed by the One Man Commission that the drinking habit in the State needs a change and several suggestions were made to curtail the menace. The menace is sought to be curtailed by evolving a policy by the Government and it cannot be faulted on the ground that a better policy could be evolved by the Government with the help of many of the interested stake holders. It is true that several employees are likely to be affected by the closure of several bar hotels. Steps are sought to be taken even in the policy to rehabilitate such persons. Even a fund is sought to be raised for their welfare. S.R.O. No. 815/2014 (G.O.(P) No. 211/2014) permitting beer and wine parlors makes a stipulation that the condition for issuing licence is that the licensee shall employ all the workers who were in his employment in the hotel as on 31.3.2014. Thus, a major part of rehabilitation of the employees in the bar hotels has been sought to be achieved by S.R.O. No. 815/2014. On practical aspect also, the view taken by the Government in this matter has been accepted by the bar hotel owners by availing the facility of opening beer and wine parlors after retaining their own employees in the bar hotels. Thus, the concern expressed by the writ petitioners that very many persons are likely to commit suicide is out of place. It is pointed out that the revenue of the State

would be adversely affected by the closure of bar hotels. It is not for the writ petitioners to worry about the same. It is for the Government to consider the same. Government is fully aware of its economic affairs. Still, the Government came forward with the policy to reduce the number of bar hotels in the State. We do not think that this view taken by the policy makers can be faulted.

52. A citizen has no fundamental right to claim that he should have access to every place of his choice to consume alcoholic drinks and for that purpose hotels should be provided with Bar licences. Because of absence of prohibition and availability of outlets owned by the Government, an individual citizen can procure alcoholic beverages in bottles and consume the same according to his wishes not at public places but at places of his choice other than public places. Therefore, the rights of individuals are not affected by the new policy. As rightly submitted by the learned senior counsel appearing for the State, only the situs is changed and there is no prohibition in taking alcoholic drinks.

53. It is submitted that if there is no venue for the general public to take alcoholic drinks in two star and three star hotels, they would be compelled to take the alcoholic drinks to their homes and consume the same in front of the family members. A contrary view is also possible that majority of alcoholics may not dare to take alcoholic drinks to their homes and consume the same in front of the family members and thus consumption of alcoholic drinks would be reduced. Court cannot dictate terms and say to the Government that their policy is bad and Court's views are correct. Views may differ; and the personal views and philosophies of persons manning the Court are quite irrelevant in considering the validity or otherwise of a policy decision.

54. Providing a venue for tourists to consume alcoholic drinks only at five star hotels is a step in aid of promotion of tourism. Tourism by itself is not an end. If somebody says that if cocaine or other narcotic or psychotropic substances are provided in public places, more tourists are likely to come to Kerala, can the Government accept the same? It is for the State to evolve a policy taking into account the welfare of the people and the courts are not expected to intervene. Dance Bar Case was relied on heavily by the learned counsel appearing for the writ petitioners. We are of the view that the Dance Bar case cannot be equated with the situation as available in the present case. In Dance Bar case, the fundamental rights of thousands of dancing girls was also in issue. Dancing by itself is not deleterious or harmful to health; may be it affects the morality of the people and dignity of women, depending upon the manner in which the dance is performed or depending upon the dress worn by the dancers. Consumption of alcoholic drinks in public places is not the same as permitting topless dancers to dance in dancing bars. We are of the view that the principles laid down by the Supreme Court in Dance Bar case as such cannot be applied to the case on hand.

55. Article 47 of the Constitution of India provides that State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the

State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Not only prohibition of the consumption of intoxicating drinks is the subject matter of Article 47; improvement of public health is stated to be one of the primary duties of the State. By reducing the consumption of alcoholic drinks, what is aimed at by the State is improvement of public health. Therefore, the policy is in consonance with Article 47 of the Constitution of India. As stated above, the State was trying to implement various policies year after year and now a comprehensive policy has been evolved to attain the goal in a phased manner. It is well settled that a policy can be evolved, so as to be implemented in a phased manner.

56. Much is said about the manner in which the policy came out. We have perused the original files. The files would disclose that the report of the Secretary (Taxes) was called for and it was made available. It is true that no specific mention is made in the policy about that report. We cannot assume that the Government did not consider that report at all. The files would reveal that even in the cabinet note prepared as per the orders of the Chief Minister on 23.6.2014, to be placed in the ensuing meeting of the council of ministers, the item for consideration was making a comprehensive abkari policy. All the materials were available even at that time before the Government. It is seen from the files that on 21.8.2014 the Chief Minister put his signature in a paper containing the policy and made an endorsement which reads as follows:

"S.(Taxes). Pl. see the Abkari Policy of the UDF. Pl. examine and place the proposals before the council."

The Council of Ministers met on 27.8.2014 and ratified the policy. Accordingly, the Foreign Liquor Rules were also amended and the notification for the same was issued on 27.8.2014. We do not find any illegality in the Chief Minister's announcing the policy and placing it for consideration of the Council of Ministers and the Council of Ministers ratifying the same and making it a policy of the Government. Consequential amendment of the Foreign Liquor Rules also cannot be faulted on the ground that the policy was not properly formulated. Even assuming that the policy was not properly formulated, the Rules as such cannot be struck down. There is nothing in the amendment, which is sought to be quashed, which would offend a fundamental right or which could be termed as arbitrary, unreasonable or irrational. The policy was an ongoing policy over the years. It was declared in the previous years that from the year 2014-15, licences would be granted only to five star hotels. There was nothing secret about it. It is also relevant to note here that in the One Man Commission report it was stated that about 30 crores of litres of alcohol flows to the State of Kerala which represented 14% of the alcohol manufactured in the country.

57. Now we shall deal with the contention raised by the appellants in W.A. Nos. 1600 of 2014 and 1640 of 2014. Rule 36 of the Foreign Liquor Rules provides that the Excise Commissioner may, upon giving fifteen days' notice, revoke any

licence, in which case a proportionate part of the fee paid by the licensee shall be refunded to him. The contention is that the Excise Commissioner has been given unregulated and unbridled power without any guidelines. Section 26 of the Abkari Act reads as follows:

"26. Power to recall licenses, etc.:- The Commissioner may cancel or suspend any license or permit granted under this Act :--

(a) if (any fee, duty, tax or rental) payable by the holder thereof be not duly paid; or

(b) in the event of any breach by the holder of such license or permit or by his servant, or by any one acting with his express or implied permission on his behalf, of any of the terms and conditions of such license or permit; or

(bb) if the holder thereof or his servant, or any one acting with his express or implied permission on his behalf, sells or stores for sale liquor in any place other than the licensed premises; or

(c) if the holder thereof is convicted of any offence against this Act or of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930, or under the Trade and Merchandise Marks Act, 1958, or under Sections 478 to 489 of the Indian Penal Code; or

(d) where a license or permit has been granted on the application of the holder of an exclusive or other privilege or of a farmer under Section 20 on the requisition in writing of such person or

(e) if the conditions of the license or permit provide for such concealment or suspension at will."

58. Section 26 makes the position clear that the power under Rule 36 can be exercised by the Commissioner only on any of the grounds enumerated in Section 26. Therefore, it cannot be said that the Commissioner has been given unbridled and unrestricted powers. The powers of the Commissioner are regulated by Section 26 and there need not be any apprehension that the Commissioner would exercise a power which is not conferred on him under Section 26.

59. The contention put forward by the learned counsel for the appellant in W.A. No. 1640 of 2014 is that clause (e) of Section 26 of the Abkari Act should be read ejusdem generis to clauses (a) to (d). On a careful reading of Section 26, it would be evident that clause (e) is a specific provision for cancellation and clause (e) is not a residuary power that is conferred on the Commissioner. Since it is not a residuary or general power, it need not be considered as ejusdem generis of the other clauses. Clause (e) of Section 26 provides for specific reasons for cancellation of licence, namely, if the conditions of the licence or permit provide for such cancellation or suspension at will. Only in that contingency, the power under clause (e) can be exercised. The submission made by the learned counsel

is unsustainable.

60. In the appeals filed by the State, they are challenging the finding and conclusion of the learned Single Judge with respect to four star and heritage hotels. The learned Single Judge arrived at the finding that since hotels belonging to four star, five star and heritage categories form a single, homogenous class by themselves, conferring a preference or advantage to five star hotels alone violates the principle of equality enshrined under Article 14 of the Constitution. We do not agree with the view taken by the learned Single Judge. It cannot be said that four star and five star as well as heritage categories form a single class by themselves. Different yardsticks are provided for categorization of four star, five star and heritage hotels. In fact, the Abkari Act adopts the guidelines made by the Ministry of Tourism, Government of India with respect to the four star and five star classifications. Specific provisions have been made in the guidelines to classify four star, five star and heritage hotels. We are unable to subscribe to the view taken by the learned Single Judge on this aspect. Four star hotels and heritage hotels cannot be equated with five star hotels. The learned Single Judge held that in the case of hotels with four star and heritage classification, there is no material to justify a conclusion that there were any complaints with respect to their functioning. That there was no complaint is not a relevant factor at all. The object that is sought to be achieved is the relevant criterion. The object being reduction of consumption of alcoholic drinks in public places and protection of youth from the adverse consequences of consumption of alcohol, absence of any complaint does not become relevant at all. The learned Single Judge also held that the Government should have at least stated that the recommendations of the One Man Commission were being rejected. We also do not agree with this conclusion. That the report of the One Man Commission was considered by the Government is crystal clear from the various terms in the policy. It is not at all necessary for the Government to state that it was inclined to reject the One Man Commission report. When the Government accepted much of the materials supplied and recommendations made by the One Man Commission, it was not proper at all for the Government to reject the One Man Commission report. Simply because the Government thought it fit not to accept the recommendations in entirety, it does not mean that the Government was rejecting the One Man Commission report. For the same reasoning and conclusion as made by the learned Single Judge with respect to three star hotels, the contentions put forward by the four star bar hotel owners also are liable to be rejected.

For the aforesaid reasons, we dismiss the Writ appeals filed by the writ petitioners and confirm the judgment of the learned Single Judge with respect to the same. We allow the Writ Appeals filed by the State and set aside that part of the judgment declaring the abkari policy 2014-15 bad to the extent of excluding hotels having four star and heritage category from the eligibility to be granted FL3 licence. The abkari policy 2014-15 and the amendments made consequent thereto are upheld in toto. The Writ Appeals filed by the interveners are also

allowed to the above extent.