

*Before Ajay Kumar Mittal, Gurmeet Singh Sandhwalia, JJ.*

**M/S RANA SUGARS LIMITED—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 7335 OF 2012**

31st October, 2012

*Constitution of India, 1950 - Arts. 226 & 227 - Punjab Excise Act, 1914 - Ss. 21 (d) & 59, RL 93 - Punjab Distillery Rules, 1932 - Petitioner engaged in business of manufacturing Country Liquor (CL)/Punjab Medium Liquor (PML) - Petitioner started using differently shaped non-round packet bottles such as kidney shape and rectangular shape which were more attractive and heavier in grammage, superior in quality - Vide Notification dt.26.3.2012 Rules amended by Financial Commissioner and in Rule 93 word "round in shape" substituted - Challenge to notification on ground amendment restricting bottle to be round in shape had no nexus with object sought to be achieved - Financial Commissioner did not have power to provide description of bottle - Held that only State Government had power to vary shape of bottle under S.58(2) (d) - Action of Financial Commissioner to issue notification dated 26.3.2012 amounts to transgressing jurisdiction of State Government.*

*Held, that the Financial Commissioner undoubtedly had the power to categorize the specification regarding the size of the bottle and the material in which it was to be used for the purpose of regulating the bottle of liquor for the purpose of sale under sub clause (b) of Section 59 but once the State Government alone had been authorised to vary the shape of the bottle under the parent Act under Section 58 (2) (d), the action of the Financial Commissioner to issue the Notification dated 26.3.2012 would amount to transgressing into the jurisdiction of the State Government.*

(Para 21)

*Further held, that the power of the Excise Commissioner is only limited regarding the change of the type of bottles in two peculiar facts. Under Section 13 of the Act, power of delegation to the Financial*

Commissioner has also been given to the State Government except the powers conferred under Sections 14, 21, 22, 31, 56 and 58 of the Act. Sub Clause (b) of Section 13 of the Act further provides that the State Government by Notification can permit the delegation to the Financial Commissioner, Commissioner or Collector or to any person or class of persons specified in such notification, the powers conferred by the Act or exercised in respect of excise revenue. Thus, delegation is excluded under Section 58 of the Act wherein the shape of the bottle can only be changed by the State Government.

(Para 22)

*Further held*, that the aforesaid judgments pertained to formulating the policy regarding the trade of liquor and whether there is any fundamental right to seal as such with the liquor trade whereas in the present case the issue relates to the lack of jurisdiction of the Respondent No.2 relating to specifying the shape of the bottle. As noticed earlier, under the Act and the rules that power vests with the State Government and, therefore, action of Respondent No.2 in issuing Notification dated 26.3.2012 is unsustainable.

(Para 25)

D.S.Patwalia, Advocate with Salil Sabhlok, Advocate for the applicant-petitioner.

Piyush Kant Jain, Addl. Advocate General, Punjab.

**G.S. SANDHAWALIA, J.**

(1) The challenge in the present petition filed under Articles 226/227 of the Constitution of India is for quashing of notification dated 26.3.2012 Annexure P-10 issued in exercise of powers conferred by Clause (d) of Section 21 and Section 59 of the Punjab Excise Act, 1914 (hereinafter referred to as "the Act") whereby the Excise Commissioner, Punjab while exercising the powers of the Financial Commissioner amended the Punjab Distillery Rules, 1932 (hereinafter referred to as "the Rules") and by virtue of said amendment, in Rule 93 of the Rules for the words "Food Grade Type" the words "Superior-Grade quality and round in shape" were substituted.

(2) The case pleaded by the petitioner is that it is a Public Limited Company having its registered office at Chandigarh and engaged in business of manufacturing of Country Liquor (CL)/Punjab Medium Liquor (PML) through its distillery which had been set up at village Louhka, Tehsil Patti, District Tarn Taran. Initially the business of the petitioner comprised of setting up of integrated sugar mill with a capacity to crush 2500 TCS of sugar cane per day at village Butter Seviaan, Tehsil Baba Bakala, District Amritsar. With the advancement and aid of modern technology the petitioner also set up a co-generation of electricity production plant with 81 MW of output which was partly used for self consumption and the remaining was being supplied to PSEB and other private consumers. One of the by products of a sugar mill was molasses which was a key ingredient for a distillery for the manufacture of spirit and for further production of liquor. The petitioner in order to use the by product i.e. molasses set up a distillery at village Louhka, Tehsil Patti, District Tarn Taran. After setting up of the distillery, the petitioner was granted the Distillery Licence in Form D-2 on 3.2.2006 which was to be renewed annually and the renewal was valid till 2.2.2013. Various restrictions had been imposed while granting the said licence and the petitioner was complying with all the restrictions. There were two types of liquor which were being sold i.e. Indian Made Foreign Liquor (IMFL) and Country Liquor/PML and the petitioner was primarily in the business of manufacturing of the PML though it also produced IMFL. The controversy in the present writ petition is restricted to the second category of the liquor i.e. CL/PML.

(3) The State of Punjab had fixed the quota of PML equally to all the Distilleries, which were eight in number and the same was to be sold to the retailers at a price which was fixed by the department every year and as such every retailer had to buy a fixed quota at a fixed price from the allotted Distillery and, therefore, the supply of PML was completely regulated. Since the quota of PML was fixed and the same was required to be sold at a fixed price, there was no incentive for the distilleries to improve their product. Thereafter, on the inputs gathered from the consumers, retailers and the field staff, the State of Punjab realised that since quotas and prices were pre-determined, the distilleries in order to minimise their cost of production and to earn maximum profit were not taking adequate steps to improve the quality of liquor which was not a very healthy situation.

In order to encourage the distilleries to improve their product, the State of Punjab decided to allow a certain percentage of total PML quota as open quota which the retailers would be free to purchase from any distillery in the State of Punjab of their choice. In the year 2007-08, the State of Punjab restricted the fixed quota to 70% and 30% quota was kept in open category wherein the retailers were free to buy liquor amongst the best quality product offered by the distilleries and as such the distilleries started improving their product and became quality conscious. In the year 2009-10 the open quota was increased to 40% and for the year 2011-12 the open quota was further increased to 50%. The distilleries, thus, started improving the quality of their product inspite of the fixed selling price of PML and every distillery including the petitioner were making sincere efforts to offer the best quality products in the market in terms of the quality of liquor, packaging, bottle including its design, labeling, cork and carton etc.

(4) The petitioner had made various improvements from the date of its inception to offer only quality products in the market and made sincere efforts to adopt different designs of the bottle in order to make it more attractive and qualitative. Accordingly, the petitioner started using differently shaped non-round pet bottles such as kidney shape and rectangular shape bottles which were more attractive and heavier in grammage, superior in quality and offered much better product in the market. The innovative idea of the petitioner of using a kidney shape and a rectangular shape bottle for PML became an extreme boon in the market and it received a huge response from the consumers and also became an important aspect for identification of its liquor which was produced by the petitioner. The consumers could easily figure out the liquor manufactured by the petitioner in view of its design being a kidney/rectangular shape bottle. The rectangular shape bottle was also registered as patent in the name of the petitioner and the registration certificate bearing No.13500 dated 28.6.2011 had been issued by the Controller General of Patents, Designs and Trade Marks, Government of India, conferring the said bottle as design No.237590. Since the consumers could easily identify the shape of the bottle in which the petitioner was producing liquor and offering for sale, there was a good business growth of the company pertaining to the sale of the open quota of PML.

(5) Under Sections 58 & 59 of the Act, the State Government had been empowered to make Rules. Along with the Excise Act, the State had also formulated the Punjab Distilleries Rules, 1932 and Rule 93 thereof dealt with the type of description of such bottles and the sizes of the same which were to be approved by the Excise Commissioner. The said rule had been amended by notification dated 17.3.2010 by the rules known as Punjab Distillery (First Amendment) Rules, 2010. In terms of the aforesaid Rules, the State Government issued instructions whereby it prescribed its rates/price for different categories of liquor on the basis of which liquor was to be sold in the State of Punjab. The State Government regulated the prices and fixed the same by which it would be sold. Similarly on 10.5.2010, respondent no.3 issued instructions whereby he regulated the type of pet bottle which was to be used for bottling of the country liquor manufactured by the distilleries. The instructions stipulated that the pet bottles which would be used would be of a stipulated grammage and could not be below the said standard and should be of food grade quality only. Accordingly, respondent no.3 issued instructions regulating the type of the pet bottle. The petitioner in compliance with the letter dated 10.5.2010 sold the liquor in the pet bottles of the stipulated grammage and even in many cases the bottles used by the petitioner were of much higher quality and of much higher grammage as stipulated by the respondents. The petitioner was also using kidney shape and rectangular shape bottles which were identified with the quality liquor and the petitioner had made sincere efforts to make its product look the best in its kind.

(6) The State had thereafter formulated a policy known as Punjab Excise Policy 2012-13 in order to regulate sale/control of liquor which came into force with effect from 1.4.2012. The State had issued a note for the first time vide which the sale of Punjab Medium Liquor in pet bottles had been restricted to round shape only. It has been pleaded that the action of the respondents in restricting the bottle to be round in shape would render the kidney shape bottle which was a registered patent of the petitioner impermissible to be used and on the basis of peculiar shape of the bottle, petitioner had touched great heights as it was easy for the consumers to identify the said liquor by its shape due to its identifiable qualitative look. The respondents had clearly over stepped their jurisdiction by restricting the shape of the bottle which did not have any nexus with the object sought to be achieved.

(7) The petitioner had approached this Court by way of Civil Writ Petition No.5949 of 2012 seeking quashing of Note of Clause 12 of the Punjab Excise Policy 2012-13 as the same was ultra vires the provisions of the Constitution of India and had no nexus with the object sought to be achieved. The State had filed short affidavit in the said writ petition and placed on record notification dated 26.3.2012 wherein the Punjab Distillery Rules, 1932 were amended and in Rule 93 thereof word 'round in shape' was substituted. The amendment of Rule 93 (1) (c) was carried out in exercise of the powers conferred under Section 21(d) read with Section 59 of the Act.

(8) The amendment restricting the bottle to be round in shape had no nexus with the object sought to be achieved in terms of public purpose and the same was liable to be quashed. The said amendment had been carried out by the Excise Commissioner exercising the powers of the Financial Commissioner and under Section 59 of the Act, the Financial Commissioner did not have any power to provide description of the bottle and only the State Government had the power under Section 58(d) of the Act. The impugned notification, thus, suffered from the vice of excessive delegation and was liable to be declared ultra vires of the provisions of the Act.

(9) The State opposed the writ petition filing the reply by way of affidavit of the Addl. Secretary to Government of Punjab, Department of Excise and Taxation, Punjab. The preliminary objection raised was that this Court cannot sit in appeal over the policy decision of the State and substitute its view to that of the State Government and the Excise Policy of 2012-13 had been formulated and in pursuance thereof notification dated 26.3.2012 had been issued. Accordingly, it was pleaded that the regularisation of trade in liquor including prescribing of the shape of bottle of liquor was exclusively in the domain of the State. Rule 93(1)(c) further provided that the Excise Commissioner could specify the sizes of bottles and, therefore, prescribing the round shape bottle had been introduced to maintain the uniformity and making its distinctive in use in larger interest of the consumers who were by and large illiterate/semiilliterate and worker class, belonging to lower strata of society. It had been introduced with the object of restricting the passing of the Country Made Liquor/PML to the poor class as deceptively similar to Indian Made Foreign Liquor (IMFL) by bottling it in attractive

bottles giving a resemblance almost akin to IMFL. The Country Made Liquor/PMI was normally being bottled in round shape in glass bottles but the pet bottles were available in the market in different non-standardized shape and size. As per the Excise policy for the year 2011-12, instructions were issued limiting the use of new glass bottles to minimum of 10%, upto 20% of old glass bottles and remaining 70% pet bottles with a uniform price in all the 3 types of bottles whereas the current excise policy for the year 2012-13 had done away with the aforesaid practice and had prescribed different rates for all the 3 types of bottles without any restriction on the percentage use of types of bottles keeping in view the fact that pet bottles were more in use in the trade and being easily and readily available in attractive shapes. It was decided to prescribe a particular round shape in order to make it conspicuously distinct and different from Indian Made Foreign Liquor (IMFL). The petitioner was earlier using round shaped pet bottles since a number of years and the contention that because of its kidney shaped pet bottles, it had gained recognition in the market was misconceived.

(10) Twelve more distilleries in the State of Punjab were manufacturing Country Made Liquor/PMI and no other distillery had raised any objection regarding round shape of bottle for PMI. Two more distilleries namely M/s Patiala Distillers and Manufacturer and M/s Picadally Sugars and Allied Industries were using bottles other than round shaped bottles namely square, rectangle, kidney etc. for the sale of CL/PMI but no such objection had been raised by the aforesaid distilleries regarding round shaped bottles for PMI. The amendment had been brought about in the Punjab Distillery Rules, 1936 by the Punjab Excise Policy 2012-13 vide notification dated 26.3.2012 in exercise of delegated power conferred by Section 21(d) read with Section 59 of the Act. The State was entitled to have a positive control over trade of liquor considering its menacing tendencies and harmful effects on the society at large and health of the individual per se and Article 47 of the Constitution of India was relied upon on the ground that it falls within the Chapter of Directive Principles of the State Policy and casts a duty on the State to bring about a prohibition in consumption of intoxicating drinks. The State Legislature was empowered to enact laws and rules on all the matters starting from the production and manufacture of intoxicant liquor to the point of their sale in the open market and also on all the matters that would fairly and reasonably be connected therewith and incidental thereto.

The statutory powers under the Act could prescribe the shape of the bottle in which liquor was to be sold under Section 58(2)(d) read with Section 3(6-a) of the Act. Regarding the powers of the Financial Commissioner, it was pleaded that the Financial Commissioner had the power to prescribe for a particular type or particular description of the bottle as it deemed fit. The phrase 'use of any type of description' in Section 58(2)(d) showed that the State had the power to make rules regarding the use of any type of description of excise bottle. Section 59(b) of the Act provided that the Financial Commissioner could make rules regulating the bottling of liquor for purposes of sale and the amendment to Rule 93 of the Rules was only to bring in consonance the said Rules with the policy of the State. The restrictions imposed by the State on liquor licences and the principle of law that there was no right to business of liquor was stressed upon. Action having been done in the larger interest of consumers who were illiterate/semi-illiterate and worker class, belonging to lower strata of society, was pleaded and that right to prescribe the bottle of certain description was intravires the Act and therefore neither the amendment to Rule 93 nor the policy suffered from any colourable exercise of power. There was no question of excessive delegation in the present case. The averments that the kidney shaped bottle of the petitioner may easily be identified by the consumers as quality liquor and that it boosted the sale of country made liquor of the petitioner distillery was denied. The petitioner under its licence had agreed to observe all the relevant rules and should not now be allowed to approbate-reprobate with regard to prescription of the shape of bottle once it had accepted all other prescriptions with regard to the quality grade etc. of the bottle. The powers of the Financial Commissioner were there under Section 59(b) in fixing the grammage and quality of bottles and that the State had power to prescribe the description of the bottles which would also include shape of the bottle. Accordingly, it was pleaded that the notification dated 26.3.2012 was within the legislative power of the Financial Commissioner under Section 21(d) read with Section 59(b) of the Punjab Excise Act, 1914.

(11) The petitioner filed replication to the written statement filed by respondents No. 1 to 4 in which it was pleaded that Section 59 of the Act under which the impugned amendment had been carried out did not grant to the Financial Commissioner any power or rule making authority with



regard to shape, size and description of bottle and such powers were beyond the legislative competence of the Financial Commissioner and, therefore, liable to be declared nonest in the eyes of law. Infact the said amendment and adding of the note by the respondent-State was with a view to harm and jeopardize the sales of the petitioner. A comparison of the sales of the petitioner company for the period April, May and June of 2012-13 showed a drastic decrease in the sales thereof. The sale of three months in the year 2011-12 was a total of ' 3,96,167/- whereas the sales of the same months in the year 2012-13 had dropped to ' 3,00,700/-. The power of regulation if any was existing only under the provisions of Section 58(2) of the Act with the State Government and notification having been issued by the Financial Commissioner was ultra vires the provisions of the Act. The petitioner did not have any fundamental right to manufacture or sell liquor but once the State was granting such licence for the running of an establishment of the liquor trade, the condition/provisions under such licence had to be such that it did not create any distinction between one licensee and the other. The mandatory provisions of equality and fair play which was touchstone of Article 14 of the Constitution of India were to be maintained. The judgments relied upon by the respondents pertained to policy part and were passed on different set of facts and circumstances.

(12) Counsel for the petitioner submitted that the Financial Commissioner had no power to carry out the amendment of the Rules and only the State Government was empowered under Section 58(2)(d) of the Act. Under Rule 93 of the Rules, the Excise Commissioner is entitled to approve the size of the bottle and further it could be Glass bottles, pet bottles, flexible bottles and pouches and that the shape could only be specified by the State Government. Accordingly, it was submitted that the amendment carried out was without jurisdiction and beyond authority as provided under the Act.

(13) Counsel for the State on the other hand defended the action and submitted that the State had absolute power and could formulate the excise policy every year. There was no fundamental right to trade in liquor and Section 3(6-a) and Section 59(b) gave the power to the State to prescribe the shape and size of the bottle. It was also submitted that purpose of amendment was that the PML could be easily identifiable by having round shape bottle from the IMFL so that the consumers were not confused.

(14) After hearing the counsel for the parties and in order to adjudicate the controversy, it would be necessary to refer to the provisions of Sections 3(6-a), 21, 58 and 59 of the relevant Act and Rules.

(15) Section 3 (6-a) of the Act refers to different sizes of bottles which reads as under:-

“3(6-a). “excise bottle” means a bottle of such type or description as may be or may have been at any time permitted for the bottling of liquor or beer by rules made under this Act.”

(16) Section 21 of the Act provides that the Financial Commissioner can subject to the restrictions or conditions imposed by the State Government establish a distillery in which spirit may be manufactured which reads thus:-

**“21. Establishment or licensing of distilleries and breweries.-**

The Financial Commissioner, subject to such restriction or condition as the State Government may impose may,-

- (a) establish a distillery in which spirit may be manufactured under a licence granted under Section 20.
- (b) discontinue any distillery so established.
- (c) License the construction and working of a distillery or brewery.
- (d) Make rule regarding-
  - (1) the granting of licenses for distilleries, stills or breweries;
  - (2) the security to be deposited by the licensee of a distillery or brewery ;
  - (3) the period for which the license shall be granted ;
  - (4) the inspection and examination of such distillery or brewery and the warehouse connected therewith and of the spirit or fermented liquor made and stored therein;
  - (5) the management and working of the distillery or brewery ;

- (6) the form of accounts to be maintained and the returns to be submitted by the licensee ;
- (7) the upkeep of buildings and plant ;
- (8) the size and description of stills and other plants ;
- (9) the manufacture, storing and passing out of spirit and contents of passes ;
- (10) the prices to be charged by the licensee ;
- (11) any other matters connected with the working of distilleries or breweries.”

(17) Section 58 and 59 of the Act deals with the power of the State Government to make rules for carrying out the provisions of the Act and for regulating the liquor trade. Sections 58 and 59 are reproduced hereunder:-

“**58. Power of State Government to make Rules.** - (1) The State Government may by notification make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenue.

- (2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may make rules :-
  - (a) prescribing the duties of excise officers;
  - (b) regulating the delegation of any power by the Financial Commissioner, Commissioner or Collector, under Section 13, Clause (b);
  - (c) prescribing the time and manner of presenting and the procedure for dealing with appeals from orders of excise officers;
  - (d) regulating the import and export, transport or possession of any intoxicant or excise bottle and the transfer, price or use of any type of description of such bottle ;
  - (e) regulating the period and localities for which, and, the persons or classes of persons, to whom licenses, permits and passes for the vend by wholesale or by retail of any intoxicant may be granted and regulating the number of such licenses which may be granted in any local area ;

- (f) prescribing the procedure to be followed and the matters to be ascertained before any licence is granted for the retail vend of liquor for consumption on the premises;
- (g) for the prohibition of the sale of any intoxicant to any person or class of persons;
- (h) regulating the power of excise officers to summon witnesses from a distance;
- (i) regulating the grant of expenses to witnesses and compensation to persons charged with offences under this Act and subsequently released, discharged or acquitted.
- (j) for the prohibition of the employment by a licence holder of any person or class of persons to assist in his business in any capacity whatsoever ;
- (k) for the prevention of drunkenness, gambling and disorderly conduct or near any licensed premises and the meeting or remaining of persons of bad character in such premises;
- (l) Prohibiting the printing, publishing or otherwise displaying or distributing any advertisement or other matter commending or soliciting the use of, or offering any intoxicant calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act, or to commit a breach or evade the provisions of any rule or order made thereunder, or the conditions of any licence, permit or pass obtained thereunder:-
- (m) Prohibiting within the State the circulation, distribution or sale of any newspaper, book, leaflet, booklet, or other publication printed and published out side the State which contains any advertisement or matter of the nature described in clause (1) :
- (n) Declaring any newspaper, book, leaflet, booklet, or other publication, wherever printed or published, containing any advertisement or matter of the nature described in clause (1) to be forfeited to the State Government ; and
- (o) Implementing generally the policy of prohibition.

3. Previous publication of rules.- The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication :

Provided that any such rules may be made without previous publication if State Government consider that they should be brought into force at once.

59. Powers of Financial Commissioner to make rules.- The Financial Commissioner may, by notification, makes rules.

- (a) regulating the manufacture, supply, storage or sale of any intoxicant, including :-
- (i) the character, erection, alteration, repair inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article and the fitting, implements, apparatus and register to be maintained therein ;
  - (ii) the cultivation of the hemp plant and the collection of spontaneous growth of such plant and the preparation of any intoxicating drug.
  - (iii) the tapping of drawing of tari from any tari producing tree.
- (b) regulating the bottling of liquor for purposes of sale ;
- (c) regulating the deposit of any intoxicant in a warehouse and the removal of any intoxicant from any warehouse or from any distillery or brewery.
- (d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass or in respect of the storing of any intoxicant;
- (e) regulating the time, place and manner of payment of any duty or fee ;

- (f) prescribing the authority by, the restrictions under, and the conditions on, which any licence, permit or pass may be granted including provision for the following matters :-
- (i) the prohibition of the admixture with any intoxicant of any substance deemed to be noxious or objectionable;
  - (ii) the regulation or prohibition or the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength.
  - (iii) the strength at which intoxicant shall be sold supplied or possessed;
  - (iiia) the fixing of the price below or above which any intoxicant shall not be sold or supplied by the licensed vendors ;
  - (iv) the prohibition of sale of any intoxicant except for cash ;
  - (v) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions;
  - (vi) the specification of the nature of the premises in which any intoxicant may be sold, and the notice to be exposed at such premises ;
  - (vii) the form of the accounts to be maintained and the return to be submitted by license holders; and
  - (viii) the prohibition or regulation of the transfer of licenses;
- (g) (i) declaring the process by which spirit shall be denatured ;
- (ii) for causing spirits to be denatured through the agency or under the supervision of its own officers;

- (iii) for ascertaining whether such spirit has been denatured ;
- (h) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use ;
- (i) regulating the disposal of confiscated articles ;
- (j) prescribing the amount of security to be deposited by holders of leases, licenses, permits or passes for the performance of the conditions of the same”

(18) The Punjab Distillery Rules, 1932 further prescribes the power of granting licence, management and working of the distillery. Rule 93 gives power to the Excise Commissioner regarding filling of bottles with country spirit and Indian Made Foreign Liquor. The said Rule reads as under:-

“93. Subject to the approval of the [Excise Commissioner] operations connected with the filling of bottles with country spirit and Indian made foreign spirit for issue shall be conducted in bond under the supervision of the Distillery Inspector, in separate rooms called bottling rooms for country spirit and Indian made foreign spirit respectively set apart for the purpose within the distillery enclosure near the spirit store. In these rooms the licensee may setup such apparatus for filtering, bottling and processes connected therewith as may be needed. Bottled spirit shall be stored in separate rooms called the bottled spirit store for country spirit and Indian made foreign spirit, respectively, set apart for the purpose within the distillery enclosure near the bottling rooms. The bottling rooms and bottled spirit store rooms shall be secured in such manner as the Excise Commissioner may approve. In the bottling rooms, bottling vats may be erected and spirit stored therein. The following rules shall be observed for the conduct of bottling operations :-

- (a) Country spirit and Indian made foreign spirit shall be bottled at the strength from time to time prescribed by the Excise Commissioner.
- (b) Bottling shall be done during the ordinary working hours of the distillery. If the licensee has reduced the strength of

spirit by blending or otherwise, he shall not bottle the spirit until 12 hours after operations are complete, unless arrangements approved by the Excise Commissioner have been made to cool the spirit to a normal issue temperature thereby preventing shrinkage in bottles after issue.

- (c) No bottles shall be filled with the spirit except in the joint presence of the inspector and a representative of the licensee.
- (d) Spirit required for bottling shall be measured out and brought into the bottling rooms by a permanently fixed pipe (bearing within the spirit store, a cocked fastening for an Excise lock or such other means as may be approved by the Excise Commissioner.
- (e) (1) The Excise Commissioner shall specifically approve the sizes, as are specified in the table given below. In case any other size is to be introduced in the market, then the same shall specifically be approved by the [Excise Commissioner]. The pet bottles, mentioned below in the table shall only be of Food Grade type :

Sr. No.	Types of Liquor	Quality	Packaging type
1.	PML 50 Rum/Gin/Whisky 65	750 ml	Glass bottles and pet bottles of the grammage prescribed by the Government in the Ex-distillery issue price.
		375 ml	
		200 ml	
		180 ml	
		100 ml (nano)	
2.	PML 50	180 ml	Pouch
3.	IMFL 75	750 ml	Glass bottles, pet bottles, tetra packs.
		375 ml	
		180 ml	



(2) The licensee shall not use for bottling spirit and bottles or flasks bearing the name and trade mark of any other bottler or any other distillery. The Excise Commissioner may accord permission to a licensee for a period not exceeding six months to use such bottles or flasks of another distillery with the consent of that distillery.

(ee) The sale of Punjab Medium Liquor in pouches of one hundred and eighty milliliters and ninety millimeters capacity shall be allowed subject to such conditions and restrictions as may be imposed by the Excise Commissioner, Punjab.

Explanation:- For the purpose of clause (ee) the expression pouch mean the polythene bag having capacity of one hundred and eighty millilitres or ninety millilitres, as the case may be designed to be used exclusively for the purpose of filling in the Punjab Medium Liquor; and

(f) (1) The bottles and flasks mentioned in clause (e) and pauch is mentioned in clause (ee) shall be of standard pattern. For the bottling of country spirit they shall bear the following specifications, moulded or sand- blasted on the glass :

- (i) the words "Punjab Excise",
- (ii) the figures and words "180 millilitres", "375 millilitres" and "750 millilitres", in cases of bottles of the capacities mentioned at serial Nos. (i), (ii) and (iii) of sub-clause (e) respectively.
- (iii) the name or mark of manufacturer of the bottles.
- (iv) a line across the neck upto which the bottle shall be filled, in order to contain the proper quantity.

(2) For the bottling of Indian made foreign spirit they shall either bear the same specifications moulded on the glass as prescribed for country spirit except the specifications in subclause (iv) of clause (f)(i) above or shall have a monogram moulded or sandblasted on them of the letters "P.E." and the figures and letters "180 ml.", "375 ml. and "750 ml."

Provided that the above specifications, except those relating to the indication of the capacity of bottles, shall not apply to bottled Indian made foreign spirit.

- (f) Notwithstanding the provisions contained in sub-rule (f) above the Excise Commissioner may, in case of emergency permit the use of non-standard pattern bottles, without the name or mark of the manufacturer of the bottles or a line across the neck and also to sand-blast letters "P.E." instead of the words "Punjab Excise" on bottles of the capacity of 375 millilitres and 180 millilitres to be used for the bottling of country spirit. Such non-standard bottles shall be of the capacity approved by the Excise Commissioner."
- (g) All bottles mentioned in sub-rule (c) above, containing Indian made Foreign Spirit and the country spirit shall unless otherwise allowed by the Excise Commissioner be securely sealed with pilfer proof seal in such a way as to make it impossible to remove the seal without its being cut and/or broken. The seals to be used on various kinds of liquor shall be [one coloured or any combination of colours which may specifically be approved by the Excise Commissioner of standard sizes and shall bear on top thereof, the word "Punjab Excise" together with the name of the distillery printed in cut-out letterings : provided that any other additional printing may be ordered to be done, if so desired by the licensee, at the sides only.
- (h) Before bringing any kind of pilfer-proof seals into use, the licensee shall submit samples thereof to the Excise Commissioner for approval. The licensee shall comply with such instructions as the Excise Commissioner, may from time to time issue regarding any such seal.
- (i) unless otherwise specially permitted by the [Excise Commissioner], country spirit, whether plain, ordinary spiced or special spiced, shall be bottled in white or-clear glass bottles or flasks.

- (j) [Unless otherwise specially permitted by the Excise Commissioner in each case for foreign brands of liquor the Licensee shall label] each bottle after bottling, with a label showing the following particulars :
- (a) the name of the distillery;
  - (b) the district in which it is situated;
  - (c) the kind of liquor bottled;
  - (d) the strength of the liquor in degrees of proof and/ or V/V as directed by Excise Commissioner from time to time; .
  - (e) the degree of obscuration tallying with the contents of the liquor bottled;
  - (f) omitted vide Leg. Sup. Part III dated 25.3.80 ;
  - (g) maximum retail sale price of liquor, if any, fixed by the Excise Commissioner for being supplied in Punjab;
  - (h) the category of the brand, namely, Economy Brand, Medium Brand, Premium Brand, or Deluxe Brand, as the case may be

Provided that the degree of obscuration need not be shown on labels to be used on bottles containing Indian Made Foreign Spirit or Foreign Brand of Liquor.

- (k) Before bringing any label into use the licensee shall [deposit rupees fifty thousand as registration fee for Indian Made Foreign Liquor and beer and rupees two thousand for Wine per label and shall] submit exact copies thereof in quadruplicate to the Collector who shall forward them to Excise Commissioner for his approval. The [Excise Commissioner], if he approves of the label, shall number it and affix his official seal. One copy shall be retained in Excise Commissioner's Office for record. [One copy will

be returned to the Collector, one to the Excise and Taxation Officer or in his absence the inspector and remaining one copy will be sent to licensee for information and record.] The licensee shall comply with such instructions as the Excise Commissioner may issue regarding any label. If the licensee desires to affix any more labels to the bottles, he shall submit specimens for approval in the manner prescribed above. Secondary labels need not have printed on them all the details required for the main label except in cases where the printing of details on the main labels has been exempted by the Excise Commissioner in each case for foreign brands of liquor. In particular the licensee shall carry out the following directions :

- (i) All labels required to be used on the bottles of spiced spirit shall bear the word "masalahdar" in Urdu and Gurmukhi characters and the words "spiced spirit" in English characters.
- (ii) Labels bearing the words "Superior" or "Special" shall only be used on the bottles of special spiced. Labels bearing the words 'Old' or "matured" shall only be affixed to bottles containing spiced spirit that has been kept in the matured warehouse for more than two years in bond from the date of distillation.
- (iii) The words "Rum" or "White Rum" shall not be used on labels to be affixed to bottles containing country spirit.
- (iv) The words "Malt Whisky" shall only be used on labels to be affixed to the bottles containing malt whisky only, as defined in these rules.
- (v) The labels on the blended product of malt whisky made in the Punjab distilleries and of imported Scotch Whisky shall describe it as "Indian Malt and Scotch Whisky Blend".

- (vi) The word "Matured Whisky" shall be used only on bottles containing matured whisky, as defined in these rules.
- (vii) All labels required to be used on the bottles of country spirit and Indian made foreign spirit] and Foreign Brands of Liquor shall bear the expression use of alcohol is [Injurious to health].

Provided that for any subsequent change in the approved label during the year, one thousand rupees shall be deposited as additional fee.

Provided further that hotels of 3-star category and above holdings license in Form L-3, L-4 and L-5 who are importing liquor from abroad directly or through an agent, the brand registration fee shall be Rs. 2,000 per label, in case label of such brand is not already approved by the Excise Commissioner. This permission will be applicable to that specific hotel only. On the contrary, if any brand of foreign liquor has already been got approved by any importer or his representative on payment of Rs. 20,000 for the year 2004-05, no separate fee shall be payable by such licensee while importing liquor from abroad.

(Omitted)

(kk) Brand registration fee shall be as under :

- (i) Punjab Medium Liquor                      Rs. 10000
- (ii) Wine Nil
- (iii) Indian made Foreign Liquor              Rs. 50000
- (iv) Imported Foreign Liquor                  Rs. 25,000  
(bottled in origin)
- (v) Subsequent change in the                      Rs. 1,000  
approved label during the  
year and

- (vi) Brand Registration fee for hotels Rs. 2,000 on-star and above category in respect of liquor imported from abroad of which brands are not already approved by the Excise Commissioner.

No separate fee for pints and nips shall be charged where fee has been paid for quarts.

- (1) Labels on the bottles shall be so affixed as to be easily distinguishable. No label shall be pasted over the words, letter or figures moulded or sand-blasted thereon.
- (m) An account of spirit received and used for bottling shall be maintained in Form D13-B.
- (n) Except with the special permission of the Excise Commissioner the Punjab Excise bottles shall not be used for bottling any country or Indian made foreign spirit, which is intended for export to another State or Union Territory. Such spirit shall be bottled either in plain bottles or in bottles bearing such marks and indications not being those approved for the Punjab as may be required by the State or Union Territory concerned. The spirit bottled for export may be issued at such strength and in bottles of such sizes as may be required by the regulations of the State or Union Territory concerned, provided that save with the special permission of the Excise Commissioner the strength of spirit thus issued shall not be lower than that prescribed for the Punjab. Such bottling shall take place on days other than those on which bottling for Punjab takes place, or if done on the same day, it must be done in a separate room. Such spirit shall also be stored separate from that meant for the Punjab. The capsules and labels to be used on spirit bottled for export to other States or Union Territory shall be of such design and bear such words as may be required by the Excise authorities of the destination to which the liquor is to be consigned. The labels shall

clearly indicate the expression 'Not for sale in the State of Punjab.' If the labels used resemble those approved for use in the Punjab, they shall be over printed with the words. In the Punjab Distillery Rules 1932, In clause (n) of Rule 93, for the words "Duty not paid to Punjab Government", wherever occurring, the words and brackets "Duty not paid to Punjab Government and for sale in the State / Union territory of - only (here indicate the name of the State or Union Territory, as the case may be), shall be substituted. -The type to be used for such over-printing shall not be smaller than two line pica.

- (0) Notwithstanding anything contained in this rule, the Excise Commissioner may permit export of I.M.F.L. out of India subject to the condition that the exporter shall indicate the following information on the I.M.F.L. bottles, meant for export out of India, namely:-
- (i) Brand name of the I.M.F.L.;
  - (ii) Alcohol contents in v/v;
  - (iii) Volume of contents;
  - (iv) Batch Number;
  - (v) Month and year of  
Manufacture; and
  - (vi) Name and address of either the manufacturer/  
exporter or foreign importer or both.

**Note.** - There would be no objection for displaying the name and/or logo of the manufacturer/exporter or foreign importer or both on the pilfer-proof seals.

- (p) The permission referred to in the preceding clause shall, however, be subject to the condition that the exporter shall produce the export order from the respective foreign

importer and shall also submit monthly statement to the Excise Commissioner indicating the fact as to how much export has been made by it during the preceding month.]

**Rule 125:** No holder of a distillery license shall sell country spirit at prices higher than those fixed by the [Excise Commissioner] from time to time.”

(19) A perusal of the aforesaid Rules shows that the power conferred on State Government is there to make the rules under Section 58(2)(d) of the Act is specific with reference to the import, export or transport or possession of any intoxicant or excise bottle and the said transfer price or use of any type of description of such bottles. In contrast Section 59 of the Act which describes the power of the Financial Commissioner to make rules, the same pertains to the manufacture, supply, storage or sale and fixing of fees and payment of dues. Similarly Rule 93 of the Rules relates to power of the Excise Commissioner regarding the filtering and bottling of the spirit and the procedure to be followed. Sub Clauses (a) and (b) deals with the strength of the liquor and that the bottling is to be done during normal working hours of the distillery and specific temperature thereby preventing shrinkage in bottles after issue and had to be filled in the presence of the Inspector and the representative of the licensee. Sub Clause (e) empowers the Excise Commissioner to approve sizes of bottles which can be 750 ml, 350 ml, 200 ml, 180 ml and 100 ml for PML. PML can also be marketed in a pouch of 80 ml. Further under Sub Rule 2, the licensee is to mark the bottle in its own name and various other conditions regarding the mark of manufacturer and monogram on the bottles whereby the details of the distillery and the District in which it is situated.

(20) The specific power to make rules for the shape of the bottle is, thus, only under Section 58(2)(d) of the Act wherein the State Government can make rules regarding the price or use of any type of description of excise bottle. The said Rule making power has been divided between the State Government and the Financial Commissioner and the later could not impinge on the jurisdiction of the State Government and issue the notification dated 26.3.2012 whereby the shape of the bottle could be prescribed by him to be round in shape. A perusal of the notification dated 26.3.2012 shows that



it has been issued by virtue of power conferred under Clause (d) of Section 21 and Section 59 of the Punjab Excise Act. The said notification reads as under:-

“GOVERNMENT OF PUNJAB  
EXCISE AND TAXATION COMMISSIONER'S OFFICE  
PUNJAB PATIALA

The 26th March, 2012.

No. G.S.R.11/PA.1/1914/Ss.21 and 59/Amd.(57). 2012- In exercise of the powers conferred by clause (d) of section 21 and section 59 of the Punjab Excise Act, 1914 (Punjab Act No.1 of 1914) read with Government of Punjab, Department of Excise and Taxation, Notification No.S.O.17/PA.1/14/S.9/2007 dated the 24th April, 2007 and all other powers enabling me in this behalf, I, A. Venu Prasad, I.A.S., Excise Commissioner exercising the powers of Financial Commissioner, make the following rules further to amend the Punjab Distillery Rules, 1932, namely:-

RULES

1. (1) These rules may be called the Punjab Distillery (First Amendment) Rules, 2012.  
(2) They shall come into force on and with effect from the first day of April, 2012.
2. In the Punjab Distillery Rules, 1932 (hereinafter referred to as the said rules) in rule 57 the following shall be substituted, namely:-
  - “(1) Revenue locks will be purchased by the management of distilleries, bottling plants, breweries and wineries with the approval of the Excise Commissioner. These locks will invariably be used wherever necessary under these rules or as per the directions of the Excise Commissioner, Punjab.
  - (2) The Inspector will be supplied with the books or lock tickets in Form D-7 for use with the revenue lock (s). Tickets must be used in the consecutive order of their numbers.

3. In the said rules, in rule 93.
  - (i) (i) in clause (e), in sub clause (1), in the last line, for the words "Food-Grade type", the words "superior Food-Grade quality and round in shape", shall be substituted; and
  - (ii) in clause (s), for the figures "2011-2012", the figures "2012-2013" shall be substituted.
4. In the said rules, for rule 122-B, the following rule shall be substituted, namely:-

"122-B All bottles of Punjab Medium Liquor, Indian Made Foreign Liquor and Imported Foreign Liquor sold in the State of Punjab, shall be affixed with the Intaglio Printed Security Labels with Hologram at the cost of the licensee. This provision shall also be applicable for liquor to be sold to and by Canteen Store Depot, Central Reserve Police Force and Indo- Tibetan Border Police."

A. VENU PRASAD,

Excise Commissioner, Punjab."

(21) The Financial Commissioner undoubtedly had the power to categorize the specification regarding the size of the bottle and the material in which it was to be used for the purpose of regulating the bottle of liquor for the purpose of sale under sub clause (b) of Section 59 but once the State Government alone had been authorised to vary the shape of the bottle under the parent Act under Section 58(2)(d), the action of the Financial Commissioner to issue the notification dated 26.3.2012 would amount to transgressing into the jurisdiction of the State Government.

(22) Rule 93(2) (ff) of the Rules further specifically provides that the Excise Commissioner only in case of emergency may permit the use of non standard pattern bottles without the name or mark of the manufacturer of the bottles. Similarly under sub clause 'n' it is provided that PML which is to be exported to another State or Union Territory can be bottled in plain

bottle or bottle bearing such marks and indications which are not approved for consumption in the Punjab State. The capsules and labels to be used on bottles to be exported have to be of such design or bear such words as may be required with the permission of the Excise Commissioner. Thus, power of the Excise Commissioner is only limited regarding the change of the type of bottles in two peculiar facts. Under Section 13 of the Act, power of delegation to the Financial Commissioner has also been given to the State Government except the powers conferred under Sections 14, 21, 22, 31, 56 and 58 of the Act. Sub Clause (b) of Section 13 of the Act further provides that the State Government by notification can permit the delegation to the Financial Commissioner, Commissioner or Collector or to any person or class of persons specified in such notification, the powers conferred by the Act or exercised in respect of excise revenue. Thus, delegation is excluded under Section 58 of the Act wherein the shape of the bottle can only be changed by the State Government.

(23) The Financial Commissioner undoubtedly had the power to categorize the specification regarding the size of the bottle and the material in which it was to be used for the purpose of regulating the bottle of liquor for the purpose of sale under sub Clause (b) of Section 59 but once there was a specific power with the State Government only regarding prescribing the shape of the bottle under Section 58(2) (d) of the Act, the action of the Financial Commissioner to issue notification dated 26.3.2012 would be wholly without jurisdiction.

(24) We may now advert to judgments cited by the learned counsel for the respondents. Reliance had been placed on judgment of the Hon'ble Apex Court in **State of Orissa and others versus Harinarayan Jaswal and others (1)**, by the learned State counsel. In the said case the issue before the Court was where the Government had rejected the bid of the writ petitioner and called for fresh auction which was subject matter of challenge. It was in such circumstances, the Apex Court held that the Government had right to sale of liquor and control the sale. The action of the Government could not be reviewed. In **Khoday Distilleries Ltd. and others versus State of Karnataka and others (2)**, the issue under consideration was the rules which affected the right of the parties to carry

(1) (1972) 2 SCC 36

(2) 1995 (1) SCC 574

the trade of liquor and where the foreign liquor licences had been cancelled for the unexpired period of licences. In such circumstances, the Hon'ble Supreme Court had held that there was no fundamental right to carry on trade of liquor. Similarly reliance upon the **State of A.P. and others versus McDowell & Co. and others (3)**, pertained to the decision of the State whereby prohibition had been imposed on the sale and consumption of the intoxicating liquor in the State of Andhra Pradesh and the said action was upheld on the ground that there was no right to carry on business of sale of liquor in view of the Directive Principles and there was no fundamental right under Article 19 (1)(g) of the Constitution of India. In **Ugar Sugar Works Ltd. versus Delhi Administration and others (4)**, the subject matter was the impugned notification laying down the terms and conditions for jurisdiction of different brands of IMFL and the laying down of minimum sale figures as a criteria of eligibility for grant of licence. The Apex Court held that the excise policy regulating the trade of liquor could not be challenged and each State was empowered to formulate its own policy. Similarly in **Government of Maharashtra and others versus Deokar's Distillery (5)**, the issue in question was that the State was authorised to charge from the liquor licensees the pay and other allowances of its employees who were posted for supervision and to raise a demand in this regard. In **State of Punjab and another versus Devans Modern Breweries Ltd. and another (6)**, the issue in question was imposition of tax on import of potable liquor manufactured in the other States and whether the State had power to levy such tax under the Punjab Excise Act. Similarly in **State of Maharashtra versus Bharat Shantilal Shah and others (7)**, the Apex Court was examining the constitutional validity of Maharashtra Control of Organised Crime Act and whether the Legislature had competence to enact such Act. The judgment in **Indian Express Newspapers (Bombay) Private Ltd. and others versus Union of India and others (8)**, relates to the levy of import duty on news print imported from abroad.

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(3) (1996) 3 SCC 709

(4) (2001) 3 SCC 635

(5) (2003) 5 SCC 669

(6) (2004) 11 SCC 26

(7) (2008) 13 SCC 5

(8) 1985 (1) SCC 641

(25) The aforesaid judgments pertained to formulating the policy regarding the trade of liquor and whether there is any fundamental right to deal as such with the liquor trade whereas in the present case the issue relates to the lack of jurisdiction of the respondent no.2 relating to specifying the shape of the bottle. As noticed earlier, under the Act and the rules that power vests with the State Government and, therefore, action of respondent no.2 in issuing notification dated 26.3.2012 is unsustainable.

(26) The Hon'ble Apex Court while laying down the principle of interpretation had held that no word in the statute can be termed as surplusage and the normal meaning has to be given. The words used which is capable of one interpretation and where there is no ambiguity then the literal interpretation has to be given, if the same does not lead to an absurdity. The observations of the Apex Court in **Nathi Devi versus Radha Devi Gupta (9)**, reads thus:-

- “11. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

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13. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.”

(27) Accordingly, the writ petition is allowed and the notification dated 26.3.2012 issued by respondent no.2 is quashed to the extent where it provides that the pet bottles for sale of PML would be round in shape. It shall, however, be open to the State Government which is free to provide any such specifications regarding the shape of the bottles by proceeding in accordance with law.

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