Before Adarsh Kumar Goel, J & Ajay Kumar Mittal, J.

NAMAN CHEMICALS AND ANOTHER,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondent*

C.W.P. No. 5400 of 2011

25th March, 2011

Constitution of India, 1950—Art. 19(1)(g), 226/227—Punjab Excise Act, 1914—Excise Policy—2011-12 discontinuation of L-17-A License— Contention of petitioner that policy violative of fundamental right Article 19(1)(g)—State cannot prohibit business in denature spirit but can only regular the same as held by Supreme Court in Synthetics and Chemicals Ltd. etc's case—petition dismissed.

Held, Reasonable restriction can be placed in and (2005) 2 SCC 762. Licensing as a part of regulatory mechanism and cannot be interfered with unless the same is arbitrary. Further held that if the excise police seeks to discontinue a license with a view to control the price of denture spirit and in changed situation the pattern of licensing has been changed, the same cannot be held to be a prohibition or interfered with the fundamental rights of the petitioner. The right is not absolute and cannot be restricted.

(Para 7, 9 & 13)

Sudhanshu Makkar and Mr. R. K. Grover, Advocates *for the petitioners.*

ADARSH KUMAR GOEL, J.

(1) This petition seeks quashing of clause 18.0 of Excise Policy 2011-12 issued by the State Government.

(2) The case of the petitioners is that they were holding L-17A licence under which they purchased denatured spirit from distilleries and sold the same to L-17 licencees and L-42A permit holders. Every year

new excise policy is released by the State Government under the provisions of Punjab Excise Act, 1914. Excise Policy for the year 2011-12 has been released, *inter-alia*, providing as under :

> "18.0:—L-17A License : A lot of substitute of denatured spirit are available in the market. As a result the demand of denatured spirit has declined sharply. The business of L-17 licensee is becoming more and more unviable. Moreover, the department has forzen the number of L-17 licenses since 2003. The existence of L-17A license which is an inter mediator between the distillery and L-17 licensee.caused to increase the price of denatured spirit further. The denatured spirit therefore becomes costlier than other cheap substitutes.
>
> The L-17A license may be discontinued as this has not been found to be serving any useful purposes.
>
> In view of the above position it has been decided that the new L-17 licenses will be granted in the current year by the Excise and Taxation Commissioner depending on the requirement of the area/district."

(3) The result of the above policy is not to renew the L-17A licences which affected the rights of the petitioners. The petitioners made representation to the State but no decision has been taken.

(4) The contention raised in the petition is that the policy of the State Government violates the fundamental right of the petitioners under Article 19(1)(g) of the Constitution. The State cannot prohibit business in denatured spirit but can only regulate the same as held in **Synthetics and Chemicals Ltd. Etc.** *versus* **State of UP (1).**

(5) We have heard the learned counsel for the petitioner.

(6) Contention raised on behalf of the petitioner is that by discontinuing grant of L-17A licenses, the State has prohibited the business of the petitioners.

(7) We are unable to accept the submission. Undoubtedly, there is significant distinction between potable liquor and industrial alcohol. While there is no fundamental right to do trade or business in liquor, industrial

(1) AIR 1990 S.C. 1927

alcohol does not stand on same footing. Still, reasonable restrictions can be placed in the interest of general public on the said business also. Such restrictions may also be for preventing their abuse or diversion for use as or in beverages. (**Khoday Distilleries Ltd.** *versus* **State of Karnataka, (2).**

(8) In **State of Bihar** *versus* **Shree Baidyanath Ayurved Bhawan (P) Ltd. (3)** was observed :

> "27. As stated above, an Ayurvedic medicinal preparation containing alcohol is capable of being used as an alcoholic beverage, just as an industrial alcohol is capable of being diverted to human consumption. It is now well settled by a catena of decisions that the manufacture of industrial alcohol is covered by the Central laws, however, its diversion can be regulated by State laws enacted with reference to Entries 6 and 8 of List II. Similarly, duty on manufacture of medicinal preparations containing alcohol would fall under the said 1955 Act, however, use and possession thereof will fall under the State law, like the said 1915 Act. Similarly, manufacture for sale of a substance containing alcohol as a drug would stand covered by the said 1940 Act, however, its use and possession as an alcoholic beverage would fall under the State law. Licensing and regulation of an activity like use/misuse of medicine is an enormous activity involving heavy expenditure. Hence, it is open to the State Government to delegate some of its powers to the Board of Revenue to prescribe forms of licence, licence fees, regulation of retail sales, etc. In the circumstances, the State as well as the Board was competent to issue the impugned notifications/ communications under Section 5, 19(4), 38, 39 and 90 of the said 1915 Act (as amended) to license and regulate the use of such preparations as alcoholic beverages. In the circumstances, we hold, that, the High Court had erred in holding that the impugned notifications/communications had encroached upon the field occupied by the said 1940 Act and the said 1955 Act the Rules framed thereunder."

(2) (1995) 1 SCC 574
(3) (2005) 2 SCC 762

(9) Thus, the State legislative possesses power to regulate industrial liquor to the extent mentioned above. Licensing is part of regulatory mechanism. Regulating even a legitimate trade through licensing may be permissible and policy can be framed for granting or refusing licences on valid grounds. Unless arbitrary, such a mechanism cannot be interfered with.

(10) In **Dwarka Prasad Laxmi Narain** *versus* **State of U.P. (4),** it was observed :—

> "7. Nobody can dispute that for ensuring equitable distribution of commodities considered essential to the community and their availability at fair prices, it is quite a reasonable thing to regulate sale of these commodities through licensed vendors to whom quotas are allotted in specified quantities and who are not permitted to sell them beyond the prices that are fixed by the controlling authorities. The power of granting or withholding licences or of fixing the prices of the goods would necessarily have to be vested in certain public officers or bodies and they would certainly have to be left with some amount of discretion in these matters. So far no exception can be taken; but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable. As has been held by this court in **Chintamon** *versus* **The State of Madhya Pradesh,** 1950 SCR 759 the phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and

(4) AIR 1954 SC 224

the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness. It is in the light of these principles that we would proceed to examine the provisions of this Control Order, the validity of which has been impugned before us on behalf of the petitioners."

(11) In **Sreenivasa General Traders** *versus* **State of A.P., (5)** it was observed :—

"17. The fundamental right of all citizens to practise any profession or to carry on any occupation or trade or business guaranteed under Article 19(1)(g) has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all.

18. In order to determine the reasonableness of a restriction imposed upon the right guaranteed by Article 19(1)(g), the Court must have regard to the nature and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. In other words, the pursuit of any lawful trade or business may be made subject to such conditions and restrictions as may be deemed essential by the legislature to be in the interests of the general public. Sub-section (6) of Section 7 undoubtedly restricts the freedom of a citizen to trade "as and where he wills"; indeed it was enacted for the very purpose of controlling business in agricultural produce, livestock and products of livestock by the establishment of regulated markets in connection therewith. It is difficult to conceive how the restriction imposed by sub-section (6) of Section 7 which interdicts that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area outside the Mraket in that area, can be said to be arbitrary or of an excessive

(5) (1983) 4 SCC 353

nature beyond what is required in the interests of the community. In **Arunachala Nadar case,** AIR 1959 SC 300, the Court repelled the contention based on a similar provision that a person who is having a licence to trade in or about the place where the market is fixed, will be deprived of his livelihood unless he resorts to the market and therefore it was an unreasonable restriction upon his right to do business. It was observed that such a provision was necessary for preventing the business in such agricultural produce being diverted to other places and the object of the scheme being defeated."

(12) In **State of Gujarat** *versus* **Mirzapur Moti Kureshi Kassab Jamat, (6)** it was observed :—

"75. Three propositions are well settled :(i) "restriction" includes cases of "prohibition"; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate ;: and (iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right. Reference may be made to **M. B. Cotton Assn. Ltd.** *versus* **Union of India** AIR 1954 SC 634, **Krishna Kumar** *versus* **Municipal Committee of Bhatapara,** (2005) 8 SCC 612 (see Compilation of Supreme Court Judgments, 1957 Jan-May, p. 33, available in Supreme Court Judges' Library), **Narendra Kumar** *versus* **Union of India,** AIR 1960 SC 430, **State of Maharashtra** *vesus* **Himmatbhai Narbheram Rao,** AIR 1970 SC 1157, **Sushila Saw Mill** *versus* **State of Orissa,** (1995) 5SCC 615, **Pratap Pharma (P) Ltd.** *versus* **Union of India (1997) 55** 87 and **Dharam Dutt** *versus* **Union of India,** (2004) 1 SCC 712."

(13) In the present case, the excise policy seeks to discontinue L-17A licence with a view to control the price of denatured spirit having

(6) (2005) 8 SCC 534

regard to the developments mentioned in the policy, L-17A licences were created under a policy of the State itself and if in the changed situation, the pattern of licencing has been changed, the same cannot be held to be prohibition or interference with the fundamental right of the petitioners. As already observed, the said right is not absolute and by a regulatory legislation, the same can be restricted. This, even by keeping in mind the distinction in potable liquor and denatured spirit, it cannot be held that the impugned policy violates of the petitioners.

(14) We accordingly find no reason to interfere with the impugned policy.

The petition is dismissed.

M. JAIN