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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 645 of 2015

Durg Bhilai Rajnandgaon Hotel (Bar) Association (Regd. No. 16730), Through Secretary, (Lalit Mohan Singh) DBR Hotel (Bar), Association, Qr. No. 3F, Str. 12, Sector-2, Bhilai, Tah. & Distt. Durg, (Chhattisgarh)
---- Petitioner

Versus

1. State of Chhattisgarh Through Principal Secretary Commercial Tax, (Excise) Department, Govt. of Chhattisgarh Mahanadi Bhawan, Capital Complex, Naya Raipur, Tah. & Distt. Raipur, (Chhattisgarh)
2. Excise Commissioner, Chhattisgarh Head Office Raipur, Tah & Distt. Raipur, (Chhattisgarh)
3. District Collector Durg 491001, Tah. & Distt. Durg, (Chhattisgarh)

---- Respondents

For Petitioner : Shri V.G. Tamaskar, Advocate
For Respondents/ State : Shri J.K. Gilda, Advocate General.

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Order On Board

Per NAVIN SINHA, C.J.

30/04/2015

1. This writ application by the Durg Bhilai Rajnandgaon Hotel (Bar) Association through its Secretary questions the liquor policy dated 30.3.2015 for the year 2015-2016 enhancing the licence fee, minimum guarantee and fixation of different rates of licence fee with regard to areas having larger population as compared to areas having lesser population.

2. Learned Counsel for the Petitioner submits that the licence fee for 2015-2016 for FL-2, FL-3 and FL-4 licence has been increased by 100% for the year 2015-2016. There has been discrimination by charging higher licence fee for sale of the same product in towns with a higher population as compared to areas with a lesser population. Increase of licence fee by 100% was against equity and justice. The fixation of an enhanced minimum guarantee would drive licencees out of business as they would be unable to sell the amount lifted. The policy dated 30.3.2015 deserves to be quashed as arbitrary.

3. I.A. No. 2 of 2015 has been filed for amendment of the writ application urging that the licence fee for the room attached to the liquor shop without amenities is very less as compared to the Bar in which 10 rooms with attached bathrooms is a must. That the Bars who are not supporting this petition have been allowed to sell alcohol of less than Rs.1,500/- violating the new rules. The Court can constitute a special investigating team to reveal illegal collusion between Excise Officers and owners of certain Bars. That there should not be any compulsion imposed upon any Bar to sell a particular brand of Alcohol. That the Bar owners have invested lot of money for construction of buildings and the compulsion to sell a particular brand would drive them out of business.

4. Learned Advocate General opposing the application submits that there is no fundamental right to trade in liquor. He relies on an order in Writ Petition (C) No. 255 of 2015 (Dhananjay Kumar Singh Vs. State of Chhattisgarh) disposing a batch of four analogous writ petitions

seeking directions for framing a scheme/ policy for unified rate of licence fee, to appoint any independent agency for licencing and deciding the permissible enhancing rate/ licence fee/ tender price for various liquor shops and to quash the rate of revenue/ price of the shops as determined. The question with regard to directions for lifting a minimum specified quantity also came in for consideration before the Learned Single Judge. Relying on AIR 1975 SC 1121 (Har Shankar v. The Deputy Excise and Taxation Commissioner), it was held that fixation of the amount payable by the licensee on the basis of the bids offered by them in auction and on the basis of 'Fixed and Assessed Fees' is neither a fee in the technical sense nor a tax but is in the nature of the price of a privilege to carry on trade in the business of liquor. Alike the aforesaid, there is no challenge to the authority of the Excise Commissioner to issue notification dated 30.3.2015 and that the licenser had the authority to fix the price obtainable for the grant of privilege to sell liquor. The Learned Single Judge also noticed (1986) 4 SCC 566 (State of M.P. v. Nandlal Jaiswal) and observed as follows:

“.....The Supreme Court thereafter noted a word of caution by saying that Courts should be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor with further observation that in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor....”

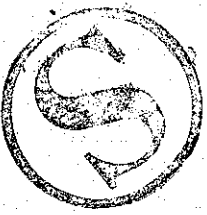
5. The right to trade in liquor and issues with regard to liquor policy was considered recently in (2013) 6 SCC 573 (State of Kerala v. Kandath Distilleries). Rather than to burden the order with repeat

discussion on aspects well settled, it is considered appropriate to extract the following passage from the same holding as follows :-

"24. Article 47 is one of the directive principles of State policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. The State has, therefore, the exclusive right or privilege in respect of potable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are *res extra commercium*, cannot be carried on by any citizen and the State can prohibit completely trade or business in potable liquor and the State can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. The State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are *res commercium*. Reference may be made to the judgments of this Court in *Vithal Dattatraya Kulkarni v. Shamrao Tukaram Power*, *P.N. Kaushal v. Union of India*, *Krishan Kumar Narula v. State of J&K*, *Nashirwar v. State of M.P.*, *State of A.P. v. McDowell & Co.* and *Khoday Distilleries Ltd. v. State of Karnataka*.

27. Liquor policy of the State is synonymous or always closely associated with the policy of the statute dealing with liquor or such obnoxious subjects. Monopoly in the trade of liquor is with the State and it is only a privilege that a licensee has in the matter of manufacturing and vending in liquor, so held, by this Court in *State of Maharashtra v. Nagpur Distillers*. The courts are also 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....."

6. We find no substance in the challenge with regard to discriminatory licence fee based on the population of the concerned area as volume of sale would naturally be affected by it. The question



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of equality arises amongst equals and not unequals. We further find from the pleadings in the amendment application itself that certain licencees have had no objection to the policy and are running their business under the new policy. The question of equity with regard to trade in liquor does not arise.

7. There is no statement in the application that such licencees are not members of the Petitioner association. We further find that the Petitioner has rushed to the Court directly without having filed any representation before the authorities except for one aggrieved licencee purportedly filing a representation in his individual capacity and not on behalf of the Association apparent from the representation itself. If the other licencees or the Association has not lodged any objection, the writ petition is not maintainable. The writ petition does not also plead that those who had filed the earlier writ petition were not members of the Petitioner Association. We form the impression in the circumstances that the present writ application suppressing the aforesaid facts is a gross abuse of the process of law and does not fall in the category of a genuine grievance seeking legal remedy.

8. There is no merit in the writ application. The application is dismissed.

**Sd/-
Chief Justice**

**Sd/-
P. Sam Koshy
Judge**