

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2932 of 2015 (M/S)

M/s United Spirits Limited Petitioner

versus

Uttarakhand Agricultural Produce
Marketing Board & others Respondents

Mr. P. Chidambaram, Sr. Advocate assisted by Mr. Navneet Kaushik, Mr. Anirudh Das, Mr. Sandeep Chilana and Mr. Aashish Gupta, Advocates for the petitioner.

Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Vipul Sharma, Advocate
for respondent no. 1.

Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Sandeep Kothari, Advocate
for respondent nos. 2 & 3.

Mr. V.B.S. Negi, Addl. Advocate General with Mr. Subhash Upadhyaya,
Chief Standing Counsel for the State / respondent nos. 4, 5 & 6.

with

Writ Petition No. 2925 of 2015 M/S)

Pernod Ricard India Pvt. Ltd. Petitioner

versus

State of Uttarakhand & others Respondents

Mr. Rajeev K. Virmani, Sr. Advocate assisted by Mr. H.M. Bhatia, Mr. Ankit Virmani and Mr. Jyoti Prakash Sahu, Advocates for the petitioner. Mr. V.B.S. Negi, Addl. Advocate General and Mr. Subhash Upadhyaya, Chief Standing Counsel for the respondent State.

Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Vipul Sharma, Advocate
for respondent no. 4.

Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Sandeep Kothari, Advocate
for respondent nos. 5 & 6.

U.C. Dhyani, J. (oral)

Since the factual matrix of the aforesaid writ petitions and the law governing the field is the same,

therefore, both of them are being decided together finally with the consent of learned Senior Counsel for the parties.

2) Writ Petition no. 2932 of 2015 (M/S), M/s United Spirits Limited vs Uttarakhand Agricultural Produce Marketing Board and others, shall be the leading case.

3) By means of present writ petitions, the petitioners seek following reliefs, among others:

A) Issue a writ, order or direction in the nature of mandamus directing the State Government / Excise Commissioner to lay down detailed mechanism pertaining to procurement of Foreign Liquor at all levels in the value chain so as to address, amongst others, all the issues raised in Ground (d) to ensure that the respondent no. 1 / respondent no. 2 / respondent no. 3 act in an efficient, transparent, fair, reasonable and unbiased manner.

B) Issue a writ, order or direction in the nature of mandamus or any other writ, order or direction directing the Addl. Excise Commissioner (Licensing) and District Collectors to fix minimum stocks (brand-wise) of Foreign Liquor to be maintained at all times by the respondent no. 1 / respondent no. 2 / respondent no. 3, on a basis which is reflective of orders placed by the retailers and commensurate to the true consumer demand, in a fair and transparent manner and in accordance with Para 10, 11 and 12 of the Communication dated 27.04.2015 and Rule 10, 11 and 12 of the Rules dated 30.04.2015.

C) Issue a writ, order or direction in the nature of mandamus or any other writ, order or direction directing the respondent no. 1 / respondent no. 2 / respondent no. 3 to procure Foreign Liquor in a fair, transparent and reasonable manner and place orders on the petitioners keeping in mind the true market demand (brand-wise).

4) Learned Senior Counsel appearing on behalf of Uttarakhand Agricultural Produce Marketing Board, GMVN and KMVN (hereinafter referred to as 'respondent nos. 1 to 3') questioned the maintainability of present writ petitions in the wake of Arbitration Clause, which runs as follows:

“ARBITRATION

11.1 Any dispute, which may arise between the Parties herein shall be submitted to arbitration. The arbitral award shall be conclusive, final and binding on both the Parties herein. The Manufacturer has agreed with the Board to provide for the nomination of a sole arbitrator by the Board only from amongst the following:-

- a. Any retired Judge of the High Court of Uttarakhand.
- b. Any retired Chief Secretary or Additional Chief Secretary to Government of Uttarakhand
- c. Any retired Excise Commissioner to Government of Uttarakhand.

.....

16. All provisions as contained in the Liquor Policy will also form a part of this agreement.”

5) Learned Senior Counsel also contended that since, according to Clause 16 of the agreement, which provides that all provisions as contained in the Liquor Policy will also form part of this agreement, therefore, it is not open to

the petitioners to contend that they are accepting the Liquor Policy and yet they are not amenable to Arbitration Clause of the agreement.

6) Per contra, learned Senior Counsel for the petitioner submitted that there are many parties to the present writ petition. The Government policy itself is not being challenged by the petitioners and, therefore, the Arbitration Clause will not be attracted in present writ petitions. Learned Senior Counsel for respondent nos. 1 to 3 drew attention of this Court towards paragraph nos. 24 and 32 of the decision of *State of Kerala and others vs Kandath Distilleries*, (2013) 6 SCC 573 to again bring home the point that the present writ petitions are not maintainable in view of following observations of Hon'ble Apex Court in *Kandath Distilleries* case (*supra*). Paragraph nos. 24 and 32 of the same are reproduced here-in-below for reference:

“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*, (1979) 3 SCC 212; *P.N. Kaushal v. Union of India*, (1978) 3 SCC 558; *Krishan Kumar Narula v. State of J&K*, AIR 1967 SC 1368; *Nashirwar v. State of M.P.*, (1975) 1 SCC 29; *State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709 and *Khoday Distilleries Ltd. v. State of Karnataka*, (1995) 1 SCC 574.

32. Discretionary power leaves the donee of the power free to use or not to use it at his discretion. Law is well settled that the exercise of statutory discretion must be based on reasonable grounds and cannot lapse into the arbitrariness or caprice anathema to the rule of law envisaged in Article 14 of the Constitution. It is trite law that, though, no citizen has a legal right to claim a distillery licence as a matter of right and the Commissioner of or the State Government is entitled to either not to entertain or reject the application, they cannot enter into a relationship by arbitrarily choosing any person they like or discriminate between persons similarly circumscribed. The State Government, when decides to grant the right or privilege to others, of course, cannot escape of the rigour of Article 14, in the sense that it can act arbitrarily. In such a situation, it is for the party who complains to establish

that a discriminatory treatment has been meted out to him as against similarly placed persons but cannot demand a licence for establishing a distillery unit, as a matter of right.”

33. In *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566, this Court held that: (SC p. 604, para 33)

“33.No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape [from] the rigour of Article 14 [of the constitution,] it cannot act arbitrarily or at its sweet will.”

7) To this, learned Senior Counsel appearing on behalf of the petitioners submitted that respondent nos. 1 to 3 whilst placing orders on the suppliers are acting on their own whims and fancies which has resulted in discrimination amongst suppliers, distortion of consumer choice and favouritism by the respondent no. 1 of certain brands of IMFL over the IMFL brands supplied by the petitioners, irrespective of the demand of the petitioners’ IMFL brands in the market. It is also submitted that the arbitrary and illegal acts of respondent no. 1 have resulted in the market sales of the petitioners’ IMPL brand dropping from 3,56,106 cases (during the months of August-October, 2014) to 10,776 cases (during the months of August-October 2015) leading to an approximate fall from 61% to 2%. This establishes that the Respondent No. 1 is favouring and promoting IMFL brands with lower demand as compared to the IMFL brands of the petitioners. It is

submitted that such arbitrary and illegal acts of the Respondent No. 1 have been possible on account of lack of express guidelines by the State Government and the Excise Commissioner on certain specific issues such as how the minimum stocks (brand-wise) have to be ascertained, time period within which the minimum stocks should be replenished, process for placing brand-wise orders by the retailer reflective of actual demand and absence of a mechanism for suppliers and retailers to check the availability of stock (brand-wise) at the warehouse of Respondent nos. 1 to 3. In a representation filed before the Chief Secretary, Uttarakhand, petitioners and other multinational companies, through the Confederation of Indian Alcoholic Beverage Companies, have highlighted the points that the existing rules do not provide for sufficient checks and balances for the respondent no. 1 to follow a consistent procurement / supply policy and allows it to act arbitrarily. It was brought to the notice of the Chief Secretary that respondent no. 1 was releasing orders for IMFL to some companies while other reputed suppliers were not being issued any orders for IMFL, leading to discriminatory practices and apprehensions on transparency of process. It is also submitted that respondent no. 1 has favoured certain brands of IMFL, to the detriment of the petitioners and certain other suppliers, completely ignoring the market demand. In the absence of a clear procurement policy, there is no clarity on the rationale for such acts. In any event, it is submitted that the respondent no. 1 being a State body cannot act in a manner which results in favouritism to some entities to the detriment of others. The

arbitrary acts of respondent no. 1 in favouring certain brands of IMFL, in the absence of any legal basis, has caused grave prejudice to the petitioners. It is submitted that whilst the total demand in the market for IMFL has increased during the relevant period, as compared to the last year, the sale of petitioners' IMFL brands has dropped significantly and the same not only results in loss of business and revenue to the petitioners but also exposes the petitioners to the risk of erosion of established brand value. In addition to the above, it is submitted that the petitioner apprehends that its continuous absence from the market will eventually result in exclusion of the petitioner and / or its brands from the market. The procurement policy adopted by the respondent no. 1 is prejudicially affecting the retailers of Foreign Liquor. It is submitted that on account of non-supply of the IMFL brands in demand, the retailers are not in a position to cater to the consumer demands. The same is resulting in severe hardship to the retailers in the form of loss of revenue and customer dissatisfaction. It is submitted that the failure of the aforesaid authorities to fulfill their respective duties of fixing the minimum stocks of all brands of Foreign Liquor that ought to be maintained by the respondent no. 1 has resulted in unfettered and wide discretion being vested in the respondent nos. 1 to 3. Lastly, it is submitted that vesting such wide and unfettered discretion has already resulted in favouritism and the respondent no. 1 acting in an arbitrary and whimsical manner to the prejudice of certain suppliers, retailers, consumers and the market as a whole.

8) Learned Senior Counsel for respondent nos. 1 to 3 also drew the attention of this Court towards Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 to state that when there is an Arbitration Clause, the Court shall not interfere in the same. Section 5 and 8 of the Arbitration and Conciliation Act, 1996, read as under:

“5. Extent of judicial intervention. –
Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

8. Power to refer parties to arbitration where there is an arbitration agreement. –(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies no later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

9) Learned Senior Counsel for the petitioners relied upon a judgment rendered by Hon’ble Supreme

Court in *P.N. Kaushal and others vs Union of India and others*, (1978) 3 SCC 558. Section 59(f)(v) of the Punjab Excise Act, 1914 and other relevant portions of aforesaid judgment are excerpted here-in-below for reference:

“59(f)(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.

45. One confusion that we want to clear up is that even if Section 59 and Rule 37 were upheld in *toto* that does not preclude any affected party from challenging a particular executive act pursuant thereto on the ground that such an act is arbitrary, *mala fide* or unrelated to the purposes and the guidelines available in the statute. If, for instance, the Financial Commissioner or the Excise Commissioner, as the case may be, declares that all liquor shops shall be opened on his birthday or shall remain closed on his friend’s death anniversary, whatever our pronouncement on the vires of the impugned provisions, the executive order will be sentenced to death.

49. We come to the crux of the matter. Is Section 59(f)(v) bad for want of guidelines? It is over-broad or too bald? Does it lend itself to naked unreasonable exercise? We were taken through a few rulings where power without embankments was held bad. They related to ordinary items like coal or restrictions where guidelines were blank. Here, we are in a different street altogether. The trade is instinct with injury to individual and community and has serious side-effects recognised everywhere in every age. Not to control alcohol business is to abdicate the right to rule for the good of the people.

Not to canalise the age and sex of consumer and servers, the hours of sale and cash-and-carry basis the punctuation and pause in days to produce partially the ‘dry’ habit – is to fail functionally as a welfare State..... The complex of provisions is purpose-oriented, considerably re-inforced by Article 47. Old statutes get invigorated by the Paramount Parchment. Thus, it is impossible to maintain that no guidelines are found in the Act.....

56. The single substantive contention has incarnated as triple constitutional infirmities. Counsel argued that the power to make rules fixing the days and hours for closing or keeping open liquor shops was wholly unguided. Three invalidatory vices flowed from this single flaw, viz. (i) excessive delegation of legislative power, (ii) unreasonable restriction on the fundamental right to trade in intoxicants under Article 19(1)(g) and (iii) arbitrary power to pick and choose inherently violative of Article 14.

61. Likewise, if the State can choose any day or hour for exclusion as it fancies and there are no rules to fix this discretion, plainly the provision [Section 59(f)(v)] must offend against Article 14 of the Constitution.

63.Indeed an annual shower of decisions on this point issues from this Court. But the essential point made in all these cases is that unchannelled and arbitrary discretion is patently violative of the requirements of reasonableness in Article 19 and of equality under Article 14, a proposition with which no one can now quarrel. It is in the application of these principles that disputes arise as Patanjali Sastri, C.J., clarified early in the day in *V.G. Row’s case* (1952) 2 SCR 597). Reasonableness and arbitrariness are not abstractions and must be tested on

the touchstone of principled pragmatism and living realism.

66.Sri Mahajan insisted that ‘special occasions’ may mean anything and may cover any occasion dictated by humour, political pressure or other ulterior considerations. It is thus a blanket power which is an unreasonable restriction on the licensee’s trade. Certainly if ‘special occasions’ means any occasion which appeals to the mood of the Financial Commissioner or has other casual fascination for him the rule may suffer from arbitrary and unreasonable features. Gandhiji’s birthday and also Vinobaji’s birthday have been included in the license itself. ‘Special occasions’ contemplated by Section 59(f)(v) are not stricken by such a vice for the obvious reasons we have elaborately given in the earlier part of our argument. The occasion must be special from the point of view of the broad considerations of national solemnity, public order, homage to national figures, the likelihood of eruption of inebriate violence on certain days on account of *melas*, festivals or frenzied situations or periods of tension. Bapuji’s birthday, election day, hours of procession by rival communities when tensions prevail or festivals where colossal numbers of people gather and outbreak of violence is on the agenda, are clear illustrations. ‘Special occasions’ cannot be equated with fanciful occasions but such as promote the policy of the statute as expounded by us earlier. There is no merit in this argument either and we reject it.”

10) Learned Senior Counsel also drew the attention of this Court towards the proposition of law laid down by

the Hon'ble Apex Court in *Lala Hari Chand Sarda vs Mizo District Council and another*, AIR 1967 SC 829, as below:

“10. Even though it may perhaps be said that the Sixth Schedule to the Constitution shows a policy to safeguard the tribals from being exploited and the Regulation was enacted in exercise of the power conferred thereunder that is not enough to save the restriction from the vice of being unreasonable. It provides no principles on which such a policy is to be implemented. As already stated, the Regulation contains no principle or criterion on which the Executive Committee should grant or refuse to grant a licence or its renewal. It does not provide any machinery under which an applicant can show cause why his application for a licence or its renewal should not be rejected. It does not also provide any superior authority before whom such an applicant can establish that the refusal by the Committee is arbitrary or without any proper cause. Indeed the Regulation does not contain any provision laying down what is and what is not a proper cause for refusal. ‘Equally it does not show any guiding criterion on which the Committee should decide to grant or refuse a licence or its renewal. The Regulation contains no provisions on the basis of which an applicant would know what he has to satisfy in order to entitle him to a licence. The power to grant or not to grant is thus entirely unrestrained and unguided. The Regulation leaves a trader not only at the mercy of the Committee but also without any remedy. Therefore even if the Sixth Schedule can be said to contain a policy and the regulation may be said to have been enacted in pursuance of such a policy the analysis of the Regulation shows that that is not sufficient. Even

if a statute lays down a policy it is conceivable that its implementation may be left in such an arbitrary manner that the statute providing for such implementation would amount to an unreasonable restriction. A provision which leaves an unbridled power to an authority cannot in any sense be characterized as reasonable. Section 3 of the Regulation is one such provision and is therefore liable to be struck down as violative of Article 19(1)(g)."

11) It will also be profitable to quote herein paragraph no. 13 of the decision rendered Hon'ble Supreme Court in *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya and another*, (2003) 5 SCC 531, which was brought to the notice of this Court by learned Senior Counsel for the petitioners. The same is excerpted here-in-under for convenience:

"Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators."

12) Learned Senior Counsel for respondent nos. 1 to 3 refuting such submission of learned Senior Counsel for the petitioners contended that the petitioners are not disputing the subject matter of arbitration. If the petitioners are questioning the inability of the State Government to fix the quota, prayer 'B' made in the writ petition only should be allowed. Learned Senior Counsel for the petitioners

submitted that the petitioners are not raising any violation to the agreement. They are simply requesting that respondent nos. 4 and 5 should perform their statutory duties under Rules 11 and 12 of the Rules dated 30.04.2015.

13) Learned Senior Counsel for the petitioners thereafter brought the following observations of the Hon'ble Apex Court rendered in *Khoday Distilleries Ltd. and others vs State of Karnataka and others*, (1996) 10 SCC 304. The same are reproduced here-in-under for reference:

“15.The learned counsel appearing for the respondents have stated before us that MSIL receives orders for supply from various purchasers. These orders specify the brand of liquor and the company from which the supplies are required. Accordingly MSIL places orders with the companies concerned for the brands of liquor which are demanded by their purchasers. It is on the basis of these demand requisitions received by MSIL that MSIL places orders..... Once the Rules oblige the manufacturers to supply their product only to the company holding the distributor licence, a corresponding duty is cast on the distributor to place orders with the suppliers concerned whenever demand for a particular product is received by it.

16. Looking to the channelising role of MSIL, the fear of discrimination between different suppliers expressed by the appellants does not appear to be justified. In the case of *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay*, (1974) 2 SCC 402,

this Court has observed that it is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. The same view was reiterated in *Director of Industries v. Deep Chand Agarwal*, (1980) 2 SCC 332. Also, if there is discrimination in actual practice, this Court is not powerless.”

14) Retailers (and not suppliers, as in the instant case) filed Writ Petition 1677 (M/S) of 2015, which was decided by a Coordinate Bench of this Court on 09.07.2015, as follows:

“Present petition, thus, stands disposed of with the observation that Excise Commissioner, Uttarakhand shall personally look in to the grievances of the petitioners. He will ensure that brands demanded by the petitioners from the FL2 licensee, i.e. Mandi Parishad Uttarakhand shall be supplied to the petitioners / dealers preferably within 72 hrs. If Excise Commissioner comes to the conclusion that despite raising demands, retail dealers / licensee are not getting supply of the brands as demanded by them, he shall be at liberty to adopt such policy and to pass such orders permitting the petitioners/dealers to lift the different brands from the distillery directly in accordance with law.”

15) The word ‘policy’, according to Black’s Law Dictionary, 8th Edition, has been defined as ‘the general principles by which the Government is guided in its management of public affairs’. 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 better and suited to the prevailing situations. The State has allowed wholesale

licenses of liquor. Although, according to Article 47, the State has power to completely prohibit, manufacture, sale, possession, distribution and consumption of liquor and consequently it is the privilege of the State to decide which liquor policy it decides to continue. The State has exclusive right or privilege in respect of potable liquor. A citizen had no fundamental right to trade or business in liquor as a beverage. State can, therefore, completely prohibit trade or business in potable liquor. The State can also create a monopoly in itself for the trade or business in such liquor. The State can also impose restrictions and limitations on the trade and business of such liquor. In the instant case, the State has permitted wholesale trading of liquor. When the State has permitted such trading of liquor, the question is – can it be done arbitrarily? Law is well settled that the exercise of statutory discretion must be based on reasonable grounds and cannot lapse into the arbitrariness. It is true that no citizen has a legal right to claim a license as a matter of right, they cannot enter into a relationship by arbitrarily charging any person they like or discriminate between the persons similarly circumscribed. The State cannot escape the rigour of Article 14, in the sense that it cannot act arbitrarily. In the instant case, although the petitioners have not pointed out the name of the company, against whom they are being discriminated, as pointed out by learned Senior Counsel for respondent nos. 1 to 3, nevertheless, the fact remains that the sales of the petitioners had drastically dropped despite there being no consumption or supply related orders. Retailers are also facing grave hardship as they are not in a position to cater

to the consumer demands, resulting in significant drop in sales. The respondent no. 1, it is alleged, has acted in a completely non-transparent manner, which, in turn, is to the detriment of the suppliers like petitioners and others. The Uttarakhand Agricultural Produce Marketing Board, as a matter of policy, will procure all brands in each FL2 and will authorise GMVN and KMVN to operate Sub-FL2 in all districts of Garhwal and Kumaon Divisions. As per policy, Sub-FL2's opened in each district will ensure the availability of all brands of foreign liquor. To control illegal sale / smuggling of liquor only foreign liquor in bottles with the approved holograms by the excise department will be permitted for sale and the foreign liquor will be sold at the price fixed. Number of retailers wrote to the In-charge of the Sub-FL2, KMVN and GMVN requesting supply of liquor brandwise. General Manager of respondent no. 1 wrote a letter (Annexure 19 to the writ petition) to all the suppliers to provide previous year supply details of liquor (all brands) quantity (QPM) month wise and district wise so that it may help in generating demand to liquor companies and supplying IMFL/BEER to Sub-FL2.

16) Alternate remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court. It cannot be said that in each and every case, without exhausting such alternate remedy, writ petition would not be maintainable. Constitutional powers vested in the High Court or the Supreme Court cannot be flattered by an alternate remedy available to the authorities. Injustice whenever and wherever it takes place, has to be struck

down as an anathema of the rule of law and the provisions of the Constitution.

17) This Court has already observed while dealing with the interim relief applications on 26.11.2015 that a writ could be filed under Article 226 of the Constitution of India for the enforcement of any of the rights conferred by Part III, or for any other purpose. If something is manifestly arbitrary, it is unreasonable. The Government company is expected to act bona fide and with responsibility and it will not be correct to contend that the Government agency is interested only in particular manufacturer. It is not every fancied possibility of discrimination but the real risk of discrimination that the Court must take into account. As per Annexure 7, three lakh plus cases were sold out by the petitioner company during the period from August 2014 to October 2014. Four lakh plus cases were sold out by the petitioner company during the period from May 2015 to July 2015. Then, suddenly there has been a fall in the orders placed before the petitioner companies by the Uttarakhand Agricultural Produce Marketing Board. The sale suddenly fell to 10,000 plus cases. The case of the petitioner companies is that although their brands are available, but no orders are being placed upon them by the respondents so much so that they are being driven out of the market and for that, although complaints have been filed, but such complaints have not been redressed till date. Why orders are not being placed by the Uttarakhand Agricultural Produce Marketing Board to the petitioner companies?

18) On 26.11.2015, apart from granting an opportunity to the respondents to file the counter affidavit(s) with liberty to challenge statistics regarding sales of cases, it was provided as an interim measure, that orders shall be placed on the petitioner companies for the month of December 2015 corresponding to the sale period of December 2014.

19) Although short counter affidavit has been filed on behalf of the respondents, the statistics regarding sale of cases has not been controverted. The interim order dated 26.11.2015 has also not been complied with by the respondents, and that is why two separate contempt petitions have been filed on behalf of the petitioners. The respondents have yet to file their replies in the contempt petitions.

20) Learned Senior Counsel for the petitioners cited the decisions of Hon'ble Supreme Court rendered in *Tayabbhai M. Bagasarwalla and another vs Hind Rubber Industries Pvt. Ltd and others*, (1997) 3 SCC 443; *Prestige Lights Ltd. vs State Bank of India*, (2007) 8 SCC 449 and *Pravin C. Shah vs K.A. Mohd. Ali and another*, (2001) 8 SCC 650 to bring home the point that that respondents who have not obeyed the interim order of the Court, should not be heard, before ensuring compliance of the interim order. Learned Senior Counsel for respondent nos. 1 to 3 cited a decision of *State of J&K vs Mohd. Yaqoob Khan and others*, (1992) 4 SCC 167, in this regard to show that so long as the stay matter in the writ petition was not finally

disposed of, further proceedings in the contempt case are misconceived and no orders therein should have been passed. This Court, at this stage, is not deciding the contempt petitions in the absence of personal service of notices upon the alleged contemnors. Learned Sr. Counsel for respondent nos. 1 to 3 also submitted that since no liberty for special appeal is available to them before the Hon'ble Division Bench of this Court against the interlocutory order, therefore, the same has not been complied with and instead, the stay vacation applications have been filed.

21) In the stay vacation applications, which have been filed on behalf of the respondents no. 1 to 3, the respondents have repeated those averments, which have largely been attended by this Court while disposing of the interim stay applications, vide order dated 26.11.2015. It is being said at the cost of repetition, that the statistics regarding sudden drop of supply orders has not been controverted in the short counter affidavit, which means, this question remains unattended as to why there is sudden fall in the supply orders of the petitioner companies? Despite demands being raised by the retailers, the brands demanded by them are not being supplied. What prevents the respondents to comply with the interim order dated 26.11.2015, if they are to show that the petitioners and others are equal to them in the eyes of law? Normally, from the point of view of a layman, the respondents ought not to have crossed the swords, if in their estimation, the petitioners and others, against whom the petitioners have

been allegedly discriminated, are on even keel. What to talk of contesting the writ petitions, the respondents are not even complying with the interim order dated 26.11.2015? The said fact speaks in volumes against them. State has a policy. Their duty is to implement it amongst all, in an equal way. When the petitioners are saying that there is sudden drop of supply orders of cases, the respondents are not coming up with a specific case as to why it is so, despite the fact that the retailers, time and again, are writing to the Uttarakhand Agricultural Produce Marketing Board to provide them all brands of IMFL for sale in the open market, as there is demand for the same in the said market. Presuming for the sake of arguments that there is no demand of all brands of IMFL in the market, as contended on behalf of respondent nos. 1 to 3, why retailers are writing to respondent no. 1, time and again, and why the orders are not being placed to the petitioner companies commensurate to the quantity (QPM) month-wise corresponding to the period of last financial year? In any case, the respondents have nothing to lose in it. They will be generating revenue out of it. Then why patronise a particular brand at the cost of the petitioners? The facts speak for themselves (*res ipsa loquitur*).

22) In such circumstances when the discrimination is writ large on its face, why should the Court not interfere, and why should the Court say that the writ petitions are not maintainable in the wake of Arbitration Clause? In a nutshell, this Court is again of the view that the writ petitions are maintainable in view of

various decisions of Hon'ble Apex Court, which have been adverted to by this Court in the foregoing paragraphs of this judgment.

23) **It was held in *Whirlpool Corporation vs Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1*, that existence of alternative statutory remedies is not a constitutional bar to High Courts jurisdiction, but is a self imposed restriction. Alternate remedy would not operate as a bar in at least three contingencies, viz., (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of principle of natural justice; or (iii) where the order or the proceedings are illegal without jurisdiction or the vires of an Act is challenged. It may be noted here that there are largely following principles of natural justice, namely, (a) an opportunity of hearing; (b) nobody should be a judge in his own cause; (c) absence of bias or arbitrariness and (d) the order must be reasoned and speaking one. Present case falls in category 'c' and, therefore, the writ petitions are maintainable.**

24) Even if it be conceded for the sake of arguments that the writ petitioners are not in contractual dispute in view of Clause 16 of the agreement which stipulates that all provisions as contained in the liquor policy will also form part of this agreement as has been argued by learned Sr. Counsel for respondent nos. 1 to 3, it is a case in which the petitioners have succeeded to fall in line with the decision of *Whirlpool Corporation vs Registrar of Trade Marks, Mumbai and others, (1998) 8*

SCC 1. Alternate remedy will, therefore, not come in the way of the petitioners to file present writ petitions.

25) So far as Section 5 of the Arbitration and Conciliation Act, 1996 is concerned, it will come into play, in the humble opinion of this Court, only when the Arbitration proceedings are going on. Section 8 of the said Act will also not be applicable to the facts of the present case, inasmuch as the magnitude of the prolem is much above the terms of Arbitration Clause. The same can not be put into the confines of the Arbitration Clause.

26) Untrammelled by the Court's earlier order dated 26.11.2015, this Court is of the considered opinion that the petitioner companies have been able to bring out that their cases rest upon surer foundation of arbitrariness, which is anathema to reasonableness, on which any Government Policy should rest. It is, therefore, held that not only the writ petitions are maintainable on this score, but the writ petitioners are also entitled to some of the reliefs as claimed for by them in the aforesaid writ petitions.

27) **A direction is, therefore, issued to Additional Excise Commissioner (licensing) and District Collectors to fix minimum stocks (brand-wise) of Foreign Liquor to be maintained at all times by the respondents no. 1 to 3, on the basis of orders placed by the retailers and commensurate to the consumer demand in accordance with Paras 10, 11 and 12 of the Communication dated**

27.04.2015 and Rule 10, 11 and 12 of the Rules dated 30.04.2015.

28) Till the aforesaid exercise is completed, it is provided that the orders shall be placed on the petitioner companies for the month of December 2015, corresponding to the sale period of December 2014; for the month of January 2016, corresponding to the sale period of January 2015, and so on and so forth.

29) This disposes of both the writ petitions.

(U.C. Dhyani, J.)

Dt. December 23, 2015.

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