

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1059 of 2018

Order reserved on: 23-8-2018

Order delivered on: 28-9-2018

Pernod Ricard India Pvt. Ltd., Through its Authorized Representative, Fifth Floor, D-3, District Center, Saket, New Delhi  
---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Excise & Commercial Tax, Mahanadi Bhawan, Mantralaya, Naya Raipur, Distt. Raipur (C.G.)
  2. Excise Commissioner, Government of Chhattisgarh, Labhandi, Chokra Nala, Raipur, Distt. Raipur (C.G.)
  3. Chhattisgarh State Marketing Corporation Limited, Through its Managing Director, Labhandi, Chokra Nala, Raipur, Distt. Raipur (C.G.)
  4. Chhattisgarh State Beverages Corporation Limited, Through its General Manager, Labhandi, Chokra Nala, Raipur, Distt. Raipur (C.G.)
- Respondents

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For Petitioner: Mr. Rajeev K. Virmani, Senior Advocate with Mr. Abhishek Sinha, Mr. Jyoti Prakash Sahu, Mr. Ankit Virmani and Mr. Amit Buxy, Advocates.

For Respondents No.1 and 2 / State: -  
Mr. Arun Sao, Deputy Advocate General.

For Respondents No.3 and 4: -  
Mr. Rajeev Shrivastava and Mr. Avinash Choubey, Advocates.

For Intervener: Mr. Anup Majumdar, Advocate.

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AND

Writ Petition (C) No.1060 of 2018

1. United Spirits Limited, a company registered under the Companies Act, 1956 and having its registered office at UB Tower, No.24, Vittal Mallya Road, Bangalore – 560 001, through its duly constituted attorney, Sushil Kumar Sharma, aged about 43 years, S/o Mr. J.M. Sharma, R/o Flat No.201, Building No.C-2, Karishma Complex, Anupam Nagar, P.S. Mowa, Raipur, Chhattisgarh

2. Somit Ghosh, aged about 47 years, S/o Late Shri Bishnu Charan Ghosh, working for gain at Area Sales Manager (L5B) at United Spirits Limited, Shop No.201, Second Floor, MM Silver Plaza, Ring Road No.1, P.S. Telibandha, Raipur, Chhattisgarh – 492 006.

---- Petitioners

Versus

1. State of Chhattisgarh, through its Chief Secretary, having office at Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Naya Raipur, Chhattisgarh.
2. Chhattisgarh Excise Department, through the Excise Commissioner, having its office at Abkari Bhavan, Labhandi, Chokra Nala, P.S. Telibandha, Raipur, Chhattisgarh.
3. Chhattisgarh State Marketing Corporation Limited, through its Chairman, having its office at Abkari Bhavan, Near Chokra Nala, Labhandih, P.S. Telibandha, Raipur, Chhattisgarh.
4. Chhattisgarh State Beverages Corporation Limited, through its Chairman, having its office at Labhandi, Chokra Nala, P.S. Telibandha, Raipur, Chhattisgarh.

---- Respondents

For Petitioners: Mr. D. Prakash Reddy, Senior Advocate with Mr. Ashish Gupta, Mr. Abhinav Kardekar, Mr. Sarathi Das Gupta and Mr. Arjun Pal, Advocates.

For Respondents No.1 and 2 / State: -  
Mr. Arun Sao, Deputy Advocate General.

For Respondents No.3 and 4: -  
Mr. Rajeev Shrivastava and Mr. Avinash Choubey, Advocates.

For Chairman, Chhattisgarh State Beverages Corporation Limited / Respondent No.4: -  
Mr. Anup Majumdar, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

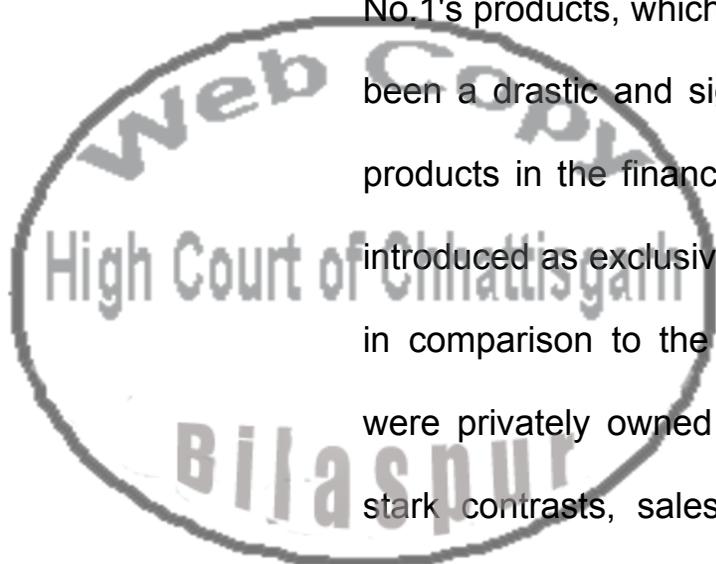
1. The petitioners in these two writ petitions, who are manufacturers and sellers of foreign liquor in India, have filed these two writ petitions claiming relief to declare that the process of procurement of liquor in the State is arbitrary, non-transparent and vague, as it has conferred unguided and unbridled discretion on respondents

No.2 and 3 in the process of procurement of liquor. The petitioners have also prayed for issuance of a direction to the respondents to fix and prescribe relevant criteria and to state a fair and transparent process for the procurement of liquor in the State on the basis of actual demand of products in the State with a further prayer to lift the products of the petitioner in accordance with the corresponding consumption for the relevant months in the financial year 2016-17 and also claimed further relief to declare that the officers of respondent No.2 cannot act as ex officio officers of respondent No.3 restraining the officers of respondent No.2 from working as officers of respondent No.3, and lastly a direction to publish in the official website of respondent No.3, on a real time basis, the data of the existing stock levels of products of the petitioner across the State.

**Petitioner's case: -**

2. To substantiate the aforesaid reliefs, it is the case of the petitioners that they are renowned and reputed leading manufacturers and sellers of foreign liquor in India. Their brands include McDowell No.1 Whisky, Royal Challenge Whisky, Black Dog Whisky, Signature Whisky, Bagpiper Whisky, Smirnoff, Black & White Scotch, VAT-69 Scotch and Celebration Rum. Apart from these, the petitioners also sell all variants of Johnnie Walker. They were selling foreign liquor in the State in previous years also. Prior to 1<sup>st</sup> of April, 2017, retail outlets for liquor were privately owned and operated. However, on and from 1<sup>st</sup> of April, 2017, control and operation of all retail outlets of liquor was taken over by respondent

No.3 and pursuant to the aforesaid change in the policy, petitioner No.1 in W.P.(C)No.1060/2018 entered into an agreement on 16-3-2017 with respondent No.4 for sale of foreign liquor. Since the agreement was valid up to 31-3-2018, a new agreement has been entered into between the aforesaid parties for sale of foreign liquor for the financial year 2018-19. It is the further case of the petitioners that prior to introduction of respondent No.3 as the exclusive licensee for retail sale in the State of Chhattisgarh on and from 1<sup>st</sup> of April, 2017, there was a significant demand for petitioner No.1's products, which enjoyed significant market share. There has been a drastic and significant fall in the sales of petitioner No.1's products in the financial year 2017-18 once respondent No.3 was introduced as exclusive licensee for retail sale of liquor in the State, in comparison to the sales of previous years when retail outlets were privately owned and operated. It is further pleaded that in stark contrasts, sales of certain select local manufacturers and suppliers have witnessed massive and unprecedented growth, with some of them achieving growth of 3984%, 1925% and 884% on a year to year comparison of annual sales. It is the pointed stand of the petitioners that the aforesaid fall in petitioner No.1's sales has been caused by the discriminatory practices adopted by respondents No.2 and 3 in the process of procurement of liquor from respondent No.4 for the purposes of retail sales at the retail outlets across the State of Chhattisgarh and such discriminatory practices are being followed as neither the Chhattisgarh Excise (Settlement of Licenses for Retail Sale of Country-Made/Foreign Liquor) Rules, 2017 (for short, 'the Rules of 2017') nor the annual



Excise Policy framed by the respondents provide for the manner or basis on which respondents No.2 and 3 are to raise demands on respondent No.4 for various products of various suppliers for the purposes of supply for retail sale, as the Rules and Excise Policy are completely silent as to how the quantities to be ordered from respondent No.4 are to be determined. There is no system in place whereby the manufacturers and suppliers can track or trace the actual stocks of their respective products available at the various retail outlets of respondent No.3 for purchase by consumers. Such opacity in the system coupled with the unbridled and untrammelled discretion conferred on respondents No.2 and 3 in the manner of procurement of liquor has made the entire process of procurement of liquor both unfair and non-transparent. Making the data in support of their case, the petitioners have sought above-stated reliefs by way of present petitions.

3. It has further been pleaded that the officers of respondent No.2 have been given the additional charge and were posted with respondent No.3, as they are working as regulators as well as they themselves are involved in sale of liquor as such, there is conflict of interest between respondents No.2 and 3 and their working suffers from doctrine of bias and conflict of interest.

**Stand of the respondents: -**

4. Respondents No.1 and 2 / State has filed its joint return separately taking common stand stating inter alia that the State is competent to frame its policy until and unless the rule framed by the State Government holds the field. It has been averred that the process of

procurement of liquor is prepared by the National Informatics Centre, Ministry of Communication and Information Technology and it has been implemented in the State from the exercise year 2011-12. The State has taken a policy decision to discourage the alcohol consumption which is in the national interest and for which the Chhattisgarh Excise (Amendment) Ordinance, 2017 was issued on 25-1-2017 and that was repealed by the Chhattisgarh Excise (Amendment) Act, 2017 on 25-1-2017 inserting Section 18A of the Chhattisgarh Excise Act, 1915 conferring power to the State to grant exclusive right for manufacturer and sale and in accordance with Section 62(1)(d) of the Chhattisgarh Excise Act, 1915, the Rules of 2017 have been framed. It is the case of the State/ respondents No.1 and 2 that the petitioner's share in the market may have reduced due to the policy of the State which discourages consumption of alcohol. It has also been averred that with the implementation of the Rules of 2017, serious threat of law and order has also been reduced considerably, as unauthorised liquor sellers, who were creating problems and inconvenience to the citizens, are out of fray. Reference has also been made to the decision of the Supreme Court in the matter of **State of Tamil Nadu v. K. Balu and another**<sup>1</sup> in which the Supreme Court has directed that all the States and Union Territories should desist from granting license for sale of liquor along National and State Highways. It has also been brought on record that to do away with the prevailing policy and in accordance with Section 18A of the Chhattisgarh Excise Act, 1917, the Chhattisgarh State Marketing

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1 (2017) 2 SCC 281

Corporation Limited was constituted and entrusted with the retail of liquor and fixation of excise duty per shops similar minimum guarantee quota prevailing in the earlier order also wiped out. Finally, the Rules of 2017 has resulted in a neutral non-apprehending and transparent procedure for the liquor sale through respondent No.3. Lastly, it has been pleaded that number of suppliers have increased from 41 to 45 from the year 2016-17 to 2017-18 and it further increased to 58 in the year 2018-19. The petitioners' right under Article 19(1)(g) of the Constitution of India is not absolute and the State in the matter of sale of liquor is free to implement any policy for the welfare of the people and the State and as such, the writ petitions filed on the ground of discrimination deserve to be dismissed.

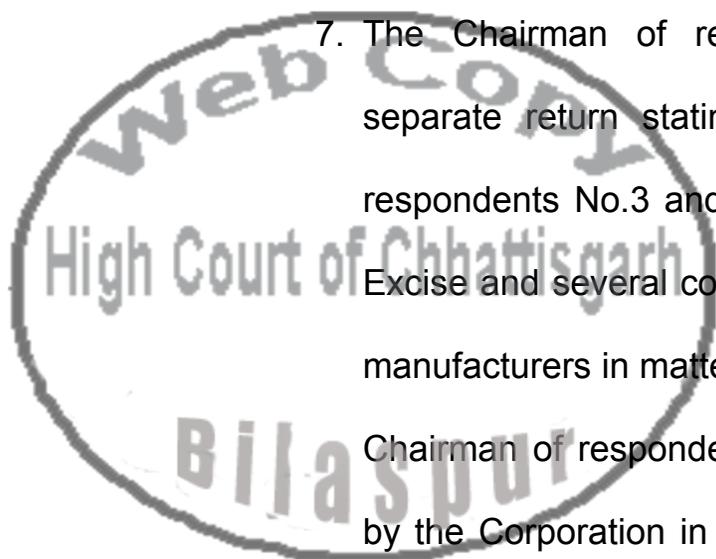
5. Respondent No.3 has filed return stating inter alia that the State of Chhattisgarh has taken a policy decision to discourage alcohol consumption pursuant to the amendment introduced in the shape of Section 18-A of the Chhattisgarh Excise Act, 1915 repealing the Chhattisgarh Excise Ordinance, 2017 by which unauthorised liquor sellers are out of fray. Due to implementation of the Rules of 2017, 417 liquor shops and 150 Bars in the State of Chhattisgarh have been affected and on account of direction passed by the Supreme Court in K. Balu's case (supra), minimum guarantee quota for retail shops has been done away and almost 18 shops were closed. The Government has taken a policy decision to close down shops in villages up to the population of 3000 in 2017-18, whereas till 2016-17, liquor shops were not functional in villages having population of

2500. Respondent No.3 is a company fully owned and controlled by respondent No.1 incorporated as per the provisions of the Indian Companies Act, 2013 with an object to regulate the sale of liquor in such a manner that the drinking habit of the people of the State be discouraged and with the implementation of the rule in the excise year 2017-18, the sale of foreign liquor has been decreased in the State of Chhattisgarh by 24%, whereas revenue of the State has increased by 20%. The law and order problem which was a serious threat to the peace loving citizens of the State has also reduced considerably and *kochiya* / unauthorised liquor sellers have been eliminated. The petitioners have not shown any legally sustainable right to seek a mandamus. It has been further pleaded that the process of procurement of liquor is prepared by National Informatics Centre, Ministry of Communications and Information Technology on 9-11-2009 and implemented in the State of Chhattisgarh from the excise year 2011-12. The State of Chhattisgarh has been considered as a role model for nation so far as implementation of the excise policy is concerned. It has also been pleaded that number of suppliers have increased in 2017-18 to 45 and looking to success and transparency of the policy in 2017-18, in the excise year 2018-19, 58 suppliers have registered for liquor supply. The petitioners could not supply the requisite quantity of liquor, as the supply is less than 57% of the purchase order. It is the further contention that petitioner No.1's products are not in demand leading to significant amount of dead stock lying at its retail shops and there was complete non-availability of petitioner No.1's stock in the months of April and May, 2017. The petitioner

No.1's Managing Director has accepted that there is over all decrease in sale of products of the petitioner due to structural changes and on account of fixation of minimum guarantee quota for each shop in the financial year 2016-17, which required lifting of monthly minimum guarantee quota fixed for all 7 slabs, the retailers were forced to lift liquor in all slabs. Thus, the writ petitions deserves to be dismissed.

6. Respondent No.4 through its officer-in-charge has filed separate return.

7. The Chairman of respondent No.4 Corporation has filed its separate return stating inter alia that the Managing Director of respondents No.3 and 4 is the ex officio i.e. the Commissioner of Excise and several complaints of undue favour shown towards few manufacturers in matters of purchasing alcohol were reported to the Chairman of respondent No.4 Corporation which were considered by the Corporation in its meeting dated 22-3-2017 and in order to arrest the complaints made, the Board of Directors thought it proper to revise the financial powers of purchasing foreign liquor. Accordingly, resolution dated 22-3-2017 was passed and the General Manager of the respondent No.4 Corporation was authorised to place order up to 5,000 boxes per month per company, whereas the Managing Director was empowered up to 15,000 boxes per month and the Chairman was authorised to place order of more than 15,001 boxes per month per company, but contrary to that resolution, the General Manager continued to place purchase order to the manufacturing companies of his own choice

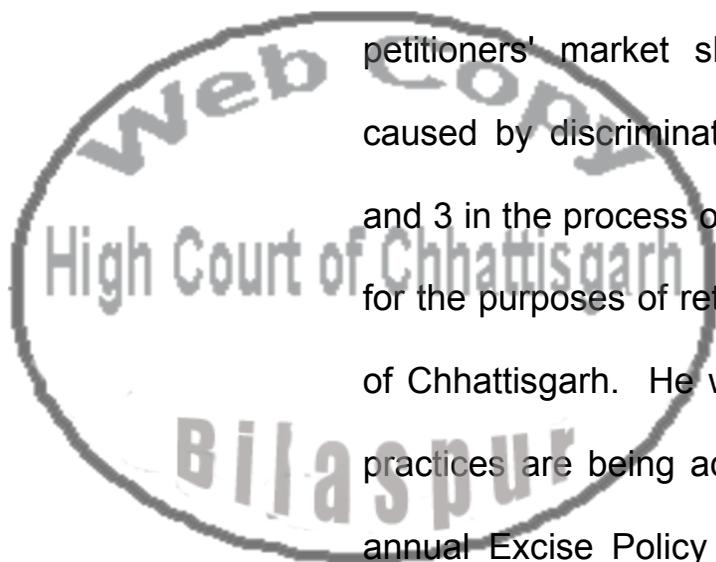


for which the Indian Audit and Accounts Department (CAG) has taken cognizance of the objection on 21-4-2017 and found the order so made by the General Manager to be irregular.

8. Rejoinder has been filed by the petitioners and additional returns have also been filed by the respondents pursuant to the rejoinder filed by the petitioners.

**Submission of parties: -**

9. Mr. D. Prakash Reddy, learned Senior Counsel appearing for the petitioners in W.P.(C)No.1060/2018, would submit that the petitioners' market share has been reduced considerably and caused by discriminatory practices adopted by respondents No.2 and 3 in the process of procurement of liquor from respondent No.4 for the purposes of retail sales at the retail outlets across the State of Chhattisgarh. He would further submit that such discriminatory practices are being adopted as neither the Rules of 2017 nor the annual Excise Policy framed by the respondents provide for the manner or basis on which respondents No.2 and 3 are to raise demands on respondent No.4 for procurement of various products of alcohol by various suppliers for the purposes of supply for retail sale, as such, the Rules of 2017 and the Excise Policy are completely silent as to how the quantities to be ordered from respondent No.4 are to be determined at ground level. Thus, gap or silence in the Rules or policy has to be addressed by the authorities by prescribing a proper mechanism in accordance with law. He would also submit that opacity in the system coupled with unbridled and untrammelled discretion conferred on respondents



No.2 and 3 in the manner of procurement of liquor has made the entire process of procurement of liquor both unfair and non-transparent. The officers of respondent No.2 are holding additional charge as the officers of respondent No.3 in different capacities and thus, the officers of the State Government are placing orders on behalf of respondent No.3 on the website of respondent No.4. It is the petitioners' submission that holding of such additional charge by the officers of respondent No.2 presents a serious conflict of interest inasmuch as the regulator and licensor is also acting for and on behalf of the licensee, having its own commercial interests and as such, holding of additional charge is an admitted position and the conflict of interest resulting therefrom is very apparent and obvious and as such, directions be issued to the State to consider and to frame a transparent policy / guidelines for procurement of liquor from the manufacturers.

10. Mr. Rajiv K. Virmani, learned Senior Counsel appearing for the petitioner in W.P.(C)No.1059/2018, would submit that the ordering practices of respondent No.3 are arbitrary and non-transparent and do not reflect true demand and the petitioner is being discriminated against and its popular brands are being systematically driven out of the market. He would submit further that the District Excise Officers / Assistant Excise Commissioners, who are officials of respondent No.2, are placing orders for and on behalf of respondent No.3, on the website of respondent No.4. This is an act of without jurisdiction or power conferred under law and also constitutes a direct conflict of interest since the State Excise Official

(Regulator) cannot also act on behalf of licensee, which is nothing but, one of the mechanisms for systematically discriminating against the petitioners and favouring others, as the State Excise Officials have been given dual charge of holding various posts of Manager in the establishment of respondent No.3 in addition to their statutory duties which is contrary to law in view of the provisions contained in Sections 7(c), 34, 36, 38, 39 and 52 of the Chhattisgarh Excise Act, 1915. He would rely on the judgment of the Supreme Court in the matter of Rajendra Shankar Shukla and others v. State of Chhattisgarh and others<sup>2</sup>. He would lastly submit that the State / respondents No.1 and 2 be directed to frame a fair, transparent and objective policy / guidelines for such procurement and sale at retail outlets and till the time the policy is formulated laying down objective criteria for assessment of demand of product and procurement on this basis, respondent No.3 be directed to procure and display for sale, the stocks of the petitioner's brands at levels equivalent to stock procured in the corresponding month in the preceding years (except the period starting from June, 2017) and the writ petition be allowed with cost.

11. Mr. Arun Sao, learned Deputy Advocate General appearing on behalf of the State / respondents No.1 and 2, would submit that the State is competent to frame its policy until and unless the rules framed by the State Government hold the field, the State and its authorities are bound to follow the rules framed by the State. The process of procurement of liquor is extremely fair and transparent.

The process of procurement of liquor is prepared by NIC, Ministry

of Communications and Information Technology and it has been implemented in the State from the excise year 2011-12. The State had already taken a policy decision to discourage the alcohol consumption which is in the national interest and the Rules of 2017 have been promulgated which is strictly in accordance with law and there is no room for acting discriminatorily among the similarly situated persons and in fact, in view of the policy of the State which discourages consumption of alcohol, the petitioners' market share may have been reduced which cannot be said to be the case of discrimination, as the Rules of 2017 has resulted in a neutral non-apprehending and transparent procedure for sale of liquor through respondent No.3 as such, the act of respondent No.3 in selling foreign liquor is in accordance with law and no interference is warranted in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. Mr. Rajeev Shrivastava, learned counsel appearing on behalf of respondents No.3 and 4, would submit that respondents No.3 and 4 are adopting the transparent policy as framed by the State Government. The sale of any product depends on number of various market factors. The entire quantity which has been supplied by the petitioners has been procured by respondent No.3 from respondent No.4 and in spite of that, respondent No.3 is having the dead stock of the petitioners' products in 22 districts. The writ petitions involve highly disputed questions of fact with regard to market factors. Where complicated questions of fact are involved and the matter requires thorough proof of factual aspects,

writ petition under Article 226 of the Constitution of India is not maintainable. The petitioners have raised the ground of breach of rights enshrined in Article 14 of the Constitution of India on the strength that some of the manufacturers are favoured by respondents No.3 and 4, but there is no specific averment made by the petitioners i.e. who have been favoured by respondents No.3 and 4, neither particulars are mentioned nor they have been impleaded. Thus, the plea of discrimination has not only been properly pleaded, but also not established. He would further submit that the respondents are adopting the transparent policy for procuring liquor for sale which is clearly established on record and the petitioners have miserably failed to demonstrate as to how the policy of procuring liquor is non-transparent. The petitioners have pleaded certain factors which they are taking in paraphernalia to combat the market forces acting against them. Markets factors are governed by economic science. It is a specialised field and such a highly specialised field are out of purview of judicial review under Article 226 of the Constitution of India, as such, the writ petitions deserve to be dismissed.

13. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

**Discussion and consideration: -**

14. In order to consider the questions so posed for consideration, it would be appropriate to notice Article 47 of the Constitution of India which provides as under: -

**“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—**The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

15. Liquor license in respect of potable alcoholic liquor is granted by the State Government. Entry 51 of the State List (List II) under the Seventh Schedule of the Constitution of India provides for duties of excise on alcoholic liquors for human consumption manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. Thus, the power of the State to grant liquor license is undoubted.

16. It is well settled principle of law that there is no fundamental right under Article 19(1)(g) of the Constitution of India to trade in liquor. Trade in liquor has been regarded as *res extra commercium* (outside commerce). Way back in the year 1974, in the matter of **Nashirwar and others v. State of Madhya Pradesh and others**<sup>3</sup>, delineating the reasons as to why there is no fundamental right of citizens to carry on trade and to do business in liquor, Their Lordships of the Supreme Court held as under: -

“23. There are three principal reasons to hold that there is no Fundamental Right of citizens to carry on trade or to do business in liquor. First, there is the police power of the State to enforce public morality to prohibit trades in noxious or dangerous goods. Second, there is power of the State to enforce an absolute prohibition of manufacture or sale of intoxicating liquor. Article 47 states that the State shall endeavour to bring about prohibition of the consumption except for medical

<sup>3</sup> (1975) 1 SCC 29

purposes of intoxicating drinks and of drugs which are injurious to health. Third, the history of excise law shows that the State has the exclusive right or privilege of manufacture or sale of liquor.”

17. The aforesaid principle of law enunciated by the Supreme Court in Nashirwar (supra) has been followed with approval consistently by Their Lordships of the Supreme Court in the matters of State of Bihar v. Nirmal Kumar Gupta<sup>4</sup>, Amar Chandra Chakraborty v. Collector of Excise<sup>5</sup>, Har Shankar v. Excise and Taxation Commr.<sup>6</sup>, State of T.N. v. K. Vinayagamurthy<sup>7</sup>, State of Punjab v. Devans Modern Breweries Ltd.<sup>8</sup>, State of Kerala and others v. Kandath Distillers<sup>9</sup> and K. Balu's case (supra).

18. It is also well settled principle of law that in case of trade in liquor, the State has following three options: -

(a) To completely prohibit the trade in liquor.

(b) To create a monopoly for itself over manufacture, sale, possession or distribution of alcohol.

(c) To allow private individuals to trade into liquor.

19. In the matter of Khoday Distilleries Ltd. and others v. State of Karnataka and others<sup>10</sup>, the Supreme Court has held that a citizen has no fundamental right to trade or business in liquor as a beverage and it has been observed as under: -

“55. ... The State's power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others.

4 (2013) 2 SCC 565

5 (1972) 2 SCC 442

6 (1975) 1 SCC 737

7 (2002) 7 SCC 104

8 (2004) 11 SCC 26

9 (2013) 6 SCC 573

10 (1995) 1 SCC 574

Prohibition is not the only way to restrict and regulate the consumption of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the State does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under [Article 19\(6\)](#) of the Constitution.

56. ... All that the citizen can claim in such a situation is an equal right to carry on trade or business in potable liquor as against the other citizens. He cannot claim equal right to carry on the business against the State when the State reserves to itself the exclusive right to carry on such trade or business. When the State neither prohibits nor monopolises the said business, the citizens cannot be discriminated against while granting licences to carry on such business. But the said equal right cannot be elevated to the status of a fundamental right.”

20. Further, in the matter of Kerala Bar Hotels Association and another v. State of Kerala and others<sup>11</sup> the Supreme Court relying upon Khoday Distilleries Ltd. (supra) held as under: -

“30. The next ground for challenge has been under Article 19. The learned Senior Counsel for the appellants, Mr Aryaman Sundaram, has sought to argue that a right under [Article 19\(1\)\(g\)](#) exists in the business of liquor. In his detailed elucidation of the decision in *Khoday*, he has contended that the State is given three options. The first is prohibition, the second is a State monopoly in manufacture or trade or both in potable liquor, and the third, which is similar to the case at hand, is that the State allows private individuals into this business, in which event everyone would have a right to partake in it. ...

32. We disagree with the submissions of the respondents that there is no right to trade in liquor because it is *res extra commercium*. The interpretation of *Khoday* put forward by Mr Sundaram is, in our opinion, more acceptable. A right under [Article 19\(1\)\(g\)](#) to trade in liquor does exist provided the State permits any

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11 (2015) 16 SCC 421

person to undertake this business. It is further qualified by [Articles 19\(6\)](#) and [47](#). The question, then, is whether the restrictions imposed on the appellants are reasonable.”

21. Likewise, it is also settled principle of law that once the State permits trade or business in liquor, it cannot discriminate between the persons / suppliers who are qualified to carry on trade or business. In other words, the State is under an obligation to provide level playing field to all the players to participate in the trade in liquor.

22. The Supreme Court in the matter of State of M.P. v. Nandlal

Jaiswal<sup>12</sup> has held as under: (SCC 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."

23. Similarly, in the matter of Doongaji and Co. (I) v. State of Madhya Pradesh and others<sup>13</sup>, Their Lordships of the Supreme

Court held as under: -

"15. It is settled law by several decisions of this Court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power, has power to prohibit absolutely any form of activity in relation to an intoxicant, its manufacture, possession, import and export. No one can claim, as against the state, the right to carry on trade or business in any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under [Article 14](#) and any infraction in this behalf at its pleasure are arbitrary violating [Article 14](#).

<sup>12</sup> (1986) 4 SCC 566

<sup>13</sup> 1991 Supp (2) SCC 313

Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of [Article 14](#). *Vide Har Shankar v. Dy. Excise & Taxation Commissioner*, (1975) 1 SCC 737 and *State of M. P. v. Nandlal Jaiswal*, (1986) 4 SCC 566.”

24. Similarly, in **Khoday Distilleries Ltd.** (supra), the Supreme Court while summarising the law on the subject culled out the following principle with regard to discrimination between the citizens who are qualified to carry on the trade or business.

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

25. In the matter of **Ugar Sugar Works Ltd. v. Delhi Administration and others**<sup>14</sup>, the Supreme Court while reiterating the law on the subject that there is no fundamental right to carry out trade in liquor and each State has power to formulate its own policy regarding such trade, has held that the State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is “liquor of good quality” in the interest of health, morals and welfare of the people.

26. With the aforesaid prefatory note with regard to the right of the State to regulate the supply of liquor within the State, it would be appropriate to notice the provisions of the Chhattisgarh Excise Act, 1915 relating to import, export, transport, manufacture, sale and possession of intoxicant liquor and intoxicant drug.

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14 (2001) 3 SCC 635

27. Section 8 of the Chhattisgarh Excise Act, 1915 is the power of the State Government to prohibit import, export or transport of any intoxicant and Section 9 is the power of the State Government to impose restriction on import, export or transport. Section 18 is the power of the State Government to grant lease of right to manufacture, etc., which states as under: -

**“18. Power to grant lease of right to manufacture, etc.—**(1) The State Government may lease to any person, on such conditions and for such period as it may think fit, the right—

(a) of manufacturing, or of supplying by wholesale or of both, or

(b) of selling by wholesale or by retail, or

(c) of manufacturing or of supplying by wholesale, or of both, and selling by retail,

any liquor or intoxicating drug within any specified area.

(2) The licensing authority may grant to a lessee under sub-section (1) a licence in the terms of his lease; and when there is no condition in the lease which prohibits sub-letting, may, on the application of the lessee, grant a licence to any sub-lessee approved by such authority.”

28. Prior to the financial year 2017-18, retail business of liquor in the State of Chhattisgarh was carried out by private persons and grant of license for retail sale was governed by the provisions of the Chhattisgarh Excise Settlement of Licenses for Retail Sale of Country/Foreign Liquor Rules, 2002 (for short, 'the Rules of 2002'). Rule 9 of the Rules of 2002 provides the eligibility criteria for the applicants seeking retail license.

29. On 25-1-2017, His Excellency the Governor of Chhattisgarh promulgated the Chhattisgarh Excise (Amendment) Ordinance,

2017. By virtue of the said Ordinance, Section 18-A was inserted in the Chhattisgarh Excise Act, 1915. The Ordinance, 2017 was followed by the Chhattisgarh Excise (Amendment) Act, 2017 repealing the Ordinance. Section 18-A introduced by the Amendment Act, 2017 repealing the Ordinance provides for power to grant exclusive right for manufacture or sale to any Corporation wholly owned and controlled by the State Government and which states as under: -

**“18-A. Power to grant exclusive right for manufacture, sale, etc.—**(1) Notwithstanding anything contained in the Act, the State Government may by general or special order grant exclusive right for the manufacture, import, export, transport, storage, purchase, wholesale, retail sale or collection of any intoxicant, denatured spirituous preparations or hemp to any Corporation wholly owned and controlled by the State Government.

(2) For the aforesaid purpose, the Excise Commissioner, subject to the rules made by the State Government, may grant necessary licence to the Corporation.

(3) For the aforesaid purposes, the Corporation, after receiving such licence, may establish its units, branches, depot and shops at such places and subject to such conditions as the Excise Commissioner may specify.”

30. Thus, the vesting of exclusive rights in retail sale of liquor in favour of a State owned and controlled Corporation has been provided in Section 18-A(1) extracted herein-above. Further, Section 18-A(2) provides for grant of necessary license to such State Corporation and the said license shall be subject to the Rules framed by the State Government. The rule making power of the State Government is provided in Section 62 of the Act of 2015 which is reproduced herein-below: -

**“62. Power to make rules.—**(1) The State Government may make rules for the purpose of carrying out the provisions of this Act.

...

(d) regulating the import, export, transport, manufacture, collection, possession, supply or storage of any intoxicant, or the cultivation of the hemp plant and may, by such rules, among other matters—

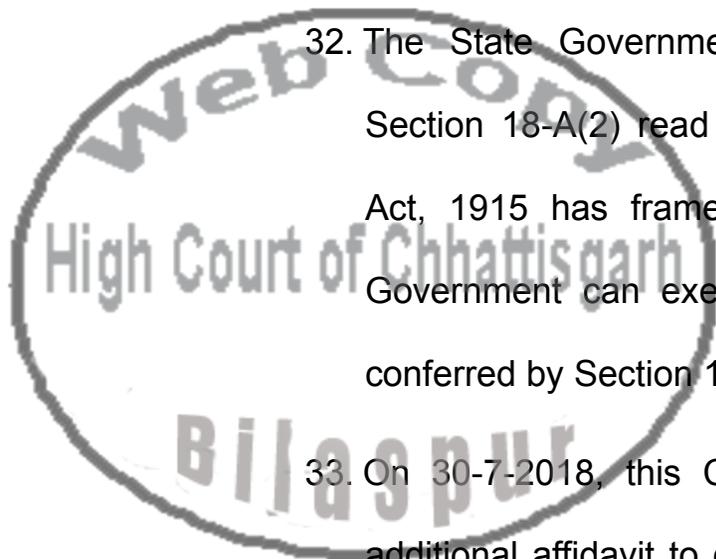
...”

31. The aforesaid rule would clearly indicate that the State Government has expressly been empowered under the Act to make rules inter alia regulating the supply of any intoxicant.

32. The State Government in exercise of power conferred under Section 18-A(2) read with Section 62 of the Chhattisgarh Excise Act, 1915 has framed the Rules of 2017, as such, the State Government can exercise the power to regulate the retail sale conferred by Section 18-A of the Act of 1915.

33. On 30-7-2018, this Court directed the State/respondents to file additional affidavit to clarify about the order passed under Section 18-A(1) of the Act of 1915 and license granted under Section 18-A(2) of the Act as per the amended provision.

34. In compliance of the order dated 30-7-2018, affidavit has been filed on behalf of the State Government stating inter alia that the Rules of 2017 were notified in which it is provided that for the retail sale of country / foreign made liquor, license would be issued only to respondent No.3 – Chhattisgarh State Marketing Corporation Limited – Government Company and it has also been prescribed in the Rules that retail sale of liquor would be made by respondent No.3 exclusively and storage and purchase is vested by the



Chhattisgarh State Beverages Corporation Limited. As such, no specific order of the State Government granting exclusive right for retail sale of country / foreign made liquor to respondent No.3 in terms of Section 18-A(1) of the Act of 1915 has been brought on record and similarly, no such license granted by the Excise Commissioner to respondent No.3, as required under Section 18-A(2) of the Act of 1915, has been brought on record despite having been asked specifically by this Court by order dated 30-7-2018, as such, there is total non-compliance of the provisions contained in Section 18-A(1) and 18-A(2) of the Act of 1915 by the State Government while handing over the sale of foreign / country made liquor to respondent No.3 Corporation.

35. At this stage, it would be appropriate to notice the salient features of the Rules of 2017 by which the Rules of 2002 were repealed. Rule 3 of the Rules of 2017 expressly provides that license for retail shops for sale of country/foreign liquor would be issued either to respondent No.3 or officer authorised by respondent No.3. Rules 5 to 7 of the Rules of 2017 inter alia provide for the process of sanctioning of license and conditions for eligibility of the applicants. Rules 8(c) and 8(d) of the Rules of 2017 also provide for the duties and levies to be paid on country/foreign liquor. Rule 8 deals with lifting of liquor. It provides for payment for country liquor/foreign liquor, submission of indent letter with District Excise Officer and obtaining transport permit, which is also evident from the Marginal Note to Rule 8 with heading "Lifting of Liquor". Rule 9 provides that respondent No.1 would determine the retail sale rates for country/

foreign liquor. In order to give effect to the judgment of the Supreme Court in K. Balu's case (supra), rules on location of retail shops have also been incorporated in the Rules of 2017. Rule 14 of the Rules of 2017 provides that there shall be a District Level Committee for settlement of retail shops which will consider issues such as (i) occupying of shops on rent; (ii) obtaining employees from placement agency; (iii) purchase of goods for operation of shops; and (iv) analysis of inspection and effective check on unauthorised liquor etc..

36. 36.1) It is the case of the petitioner in W.P.(C)No.1059/2018 that since June, 2017, respondent No.3 has drastically reduced the lifting of stock of the petitioner {in W.P.(C)No.1059/2016} even though the retail outlets have virtually no inventory of the petitioner's affected brands, which has led to creation of artificial scarcity of the petitioner's affected brands at the retail outlets of respondent No.3 despite sufficient availability of stock of these brands at wholesale depots of respondent No.4. In order to demonstrate the aforesaid facts, the petitioner has shown in a table in para 8.9 of the petition which is as under: -

BRANDS	June, 2015 – February, 2016	June, 2016 – February, 2017	June, 2017 – February, 2018	% decrease in June, 2017 – February, 2018 as compared to June, 2016 – February, 2017
Imperial Blue	415.9	336.4	98.3	70.77%
Royal Stag	279.7	301.7	137.1	54.56%
Blenders Pride	48.8	52.1	33.5	35.7%

36.2) Likewise, in para 8.27 of the petition, the petitioner {W.P.(C) No.1059/2016} has given figures to demonstrate the drastic drop in

lifting of its affected brands by respondent No.3 from respondent No.4 depot since June, 2017, which are as under: -

a. Retail outlet at Kewarmunda, Kevaramunda: -

Vol. of stock lifted by the retail outlet from respondent No.4 ('000 cases)	June, 2015 – February, 2016	June, 2016 – February, 2017	June, 2017 – February, 2018
Petitioner	12.8	11.7	2.2

b. Retail outlet at Sadar Bazaar, Jagdalpur

Vol. of stock lifted by the retail outlet from respondent No.4 ('000 cases)	June, 2015 – February, 2016	June, 2016 – February, 2017	June, 2017 – February, 2018
Petitioner	14.1	13.0	1.8

c. Retail outlet at Kondagaon

Vol. of stock lifted by the retail outlet from respondent No.4 ('000 cases)	June, 2015 – February, 2016	June, 2016 – February, 2017	June, 2017 – February, 2018
Petitioner	8.5	12.0	1.1

36.3) It has also been stated by the petitioner that the above-stated drop in lifting the petitioner's affected brands has happened despite the availability of sufficient stocks of these brands at the depots of respondent No.4 comparable to stock levels of previous years. A comparative table of average monthly closing stocks of the petitioner's affected brands between June, 2017 – February, 2018 is as follows: -

BRANDS	June, 2015 – February, 2016	June, 2016 – February, 2017	June, 2017 – February, 2018
Imperial Blue	13,466	10,219	9,271
Royal Stag	8,905	7,581	8,121
Blenders Pride	2,105	1,622	2,363

36.4) It is pertinent to notice here that the above-stated figures shown by the petitioner {W.P.(C)No.1059/2018} have not been denied or controverted by respondent No.3 while filing its counter-affidavit and respondent No.3 has also not chosen to produce the data on monthly stock levels of the petitioner's affected brands maintained at its retail outlets which would have shown the correct stocks levels of the petitioner's affected brands at the retail outlets, though lengthy affidavits running into several pages have been filed by the State as well as respondent No.3 herein. The State and respondent No.3 ought to have acted fairly by producing the relevant data in this regard.

36.5) It is also the case of the petitioner {W.P.(C)No.1059/2018} that in the financial year 2017-18, there has been phenomenal rise in lifting by respondent No.3 from respondent No.4 depot of several other brands in the same excise slab as the petitioner's affected brands. Para 2(g) of the rejoinder states the figures as under: -

BRANDS	2015 – 16	2016 – 17	2017 – 18
White & Blue Premium Whisky	1,305	1,152	50,285
New Improved Aristocrat Premium Blended	15,539	10,957	32,991
AC Black Pure Grain Whisky	8,500	7,509	25,254

#### **W.P.(C)No.1060/2018**

37. It is also the case of the petitioners in W.P.(C)No.1060/2018 that sales of petitioner No.1's products have significantly declined, once respondent No.3 took over the control and operation of retail outlets in the State of Chhattisgarh upon introduction of respondent No.3 in April, 2017. The petitioners have clearly pleaded in the writ petition

that the petitioners' market share in Chhattisgarh has drastically fallen from 34% to 14% for the period from June, 2016 to January, 2017 and from June, 2017 to January, 2018. It has also been pleaded that revenues of petitioner No.1 from the State of Chhattisgarh have witnessed a drastic fall from ₹ 138 crores to ₹ 63 crores in financial year 2017-18 and lifting quantities of Mc Dowell No.1 Whisky have fallen from 2,81,620 cases to 61,487 cases for the period from June, 2016 to February, 2017 and from June, 2017 to February, 2017. It is pertinent to mention here that the figures pleaded and highlighted stated herein-above have neither been denied specifically nor controverted by respondent No.3 in either return or additional return despite filing of counter affidavit taking several grounds.

38. At this stage, it would be appropriate to notice the Excise Policy for the year 2017-18 promulgated by the State Government which has been filed along with the writ petition. It is the case of the petitioners that neither the Rules of 2017 nor the Excise Policy of 2017-18 provides for any objective criteria on the basis of which orders for retail sale are to be placed by respondent No.3 on respondent No.4 and further case is that in absence of any objective criteria, unfettered and unbridled powers have been vested in respondents No.2 and 3, which is not only open to abuse and misuse, but has in fact been so abused and misused by respondent No.3 in the instant case. In support of their contention, the petitioners would rely upon the following paragraphs of the writ petition: - (W.P.(C)No.1060/2018)

“9.20 For the reason that neither the Excise Policy issued by the Respondent No.2 nor the Chhattisgarh Excise (Settlement of Licenses for Retail Sale of Country-Made/Foreign Liquor) Rules, 2017 provide for any guidelines or any tangible reference or relevant criteria on the basis of which procurement of liquor by Respondent No.3 for onwards sale (retail sale) should take place. In addition to the above, the entire procurement process commencing from the demand notes raised by the Respondent No.3 and until placement of orders by officials of Respondent No.2 is completely opaque and non-transparent. The consequence of the above is that the Respondents are vested with unbridled and unfettered powers which are open to abuse and misuse with impunity, which in fact is the case, constraining the Petitioners to file the present Petition before this Hon'ble Court. It is submitted that vesting such unbridled and unfettered powers/discretion in an authority/corporation, in the absence of any guiding principles governing exercise of such powers/discretion, renders the entire Excise Policy and the Chhattisgarh Excise (Settlement of Licenses for Retail Sale of Country-Made/Foreign Liquor) Rules, 2017 as arbitrary and unreasonable.

9.21 For the reason that the lack of transparency in the process of procurement of liquor by Respondent No.3 from Respondent No.4, as stated above, not only allows the Respondent No.2 and Respondent No.3 to misuse the discretion/powers vested in them, but has in fact been misused in the present case. The Petitioner No.1, as highlighted above, has been the victim of discrimination at the hands of the Respondent No.2 and Respondent No.3 which has led to the exclusion of the Petitioner No.1's brands from the market in the State of Chhattisgarh.”

39. In reply to the said averments, respondent No.3 in W.P.(C)

No.1060/2018 has filed return stating following reply: -

“2. At the outset it is submitted that that as per the pleadings of the Petitioner the cause of action for filing the Petition is decline in sales of liquor of the brands manufactured by the Petitioner. It is the case of the Petitioner that this decline is due to implementation of Chhattisgarh Excise Country / Foreign Liquor Settlement of License Rules, 2017 (which will be referred to hereinafter as the “Rules 2017”). It is the respectful submission of the answering respondent that the Petition is misconceived. There is no contents in the Petition which correlates the reason in decline of sale with

implementation of Rules 2017.”

40. In rejoinder to the return filed by respondent No.3, the petitioners in W.P.(C)No.1060/2018 again countered the aforesaid averments of respondent No.3 by reiterating their submission made in the original petition by stating as under: -

“3. In response to para 2 of the Return, it is submitted that the Respondent No.4's contention that “there are no contents in the Petition which correlates the reason in decline in sale with implementation of Rules 2017” is misconceived in as much as the entire case of the Petitioners is predicated on the taking over of monopolistic control of ownerships and operations of the retail outlets by Respondent No.3, which has resulted in unbridled and unfettered discretion being vested in the Respondent functionaries in the procurement process of liquor. Such monopolistic control of Respondent No.3 has only been introduced in 2017 by virtue of the Rules of 2017. Reference in this regard may be made to Rule 3(a) and 5 (Petition @ 46) of the Rules of 2017, whereunder Respondent No.3 is made the sole and exclusive licensee for retail sale of liquor in the State of Chhattisgarh.”

41. Thus, it is the clear case of the petitioners that on account of lack of objective criteria for determination of orders to be placed on respondent No.3, respondent No.3 has been loaded with unbridled and unfettered power for making / placing orders to respondent No.4.

42. The question for consideration would be, whether there is an objective criteria or policy laid down particularly by the State Government for placing orders by respondent No.3 to respondent No.4?

43. In this regard, return filed on behalf of respondents No.1 to 3 may be noticed herein in which in respect of determination of quantity for lifting of liquor, respondents No.1 to 3 have placed reliance upon

the website designed by the National Informatics Centre (NIC) being the procurement policy of the State of Chhattisgarh. Relevant extracts from the return filed by respondent No.3 is as under: - (W.P.(C) No.1059/2018)

“9. It is the most humble and respectful submission of the answering respondent that Petitioner has challenged the procurement process of liquor on the ground the same confers unguided and unbridled discretion and power on Respondent No 2 and 3 in the process of procurement of liquor. Whereas, the process of procurement of liquor is prepared by the National Informatics Center, Ministry of Communication & IT (which will be referred hereinafter 'NIC') on 09.11.2009 and implemented in the state of Chhattisgarh from the excise year 2011-12. A copy of the scheme prepared by NIC is filed herewith as Annexure R-3/2.

15. The Petitioner has challenged the present online system of lifting of Liquor by retail shops of various brands of being non-transparent. However, the petitioner has deliberately created a camouflage by misrepresenting that there is any change in the system of lifting of liquor by the retail shops of various brands. As stated earlier there is no change in the system of lifting of liquor by the retails shops in the year 2017-18 as compared to year 2016-17. The Answering Respondent most humbly submits that the mechanism used by respondents is that Respondent No.3 procures liquor on the basis of an effective mechanism which is not only transparent, efficient, effective but also accountable using Information & Communication Technology (ICT). The present online system of indenting and lifting of liquor is operational since 2010-2011 and it had helped in reduction of floats, better stock management and improving transparency in *toto*. This system is timely tested and used by erstwhile private retailers. It has been regularly updated and made more feature rich as per requirement of suppliers and retailers. This system has been adopted by Jharkhand, Odisha and Himachal Pradesh being very user friendly. The indent is raised at shop level depending upon the pattern of sale. Hence the claim of the Petitioner that the system is non-transparent does not hold any ground. A copy of indenting windows is filed herewith as Annexure-R-3/9.”

44. In the rejoinder filed by the petitioners, they have stated that they have not challenged or questioned the online system of

procurement of liquor through the website of respondent No.4, but their case is that the present process of procurement of liquor is non-transparent and respondent No.3 is conferred with untrammelled and unbridled discretion in raising demands with respondent No.4. It is the case of the petitioners that the sales of petitioner No.1 have sharply fallen down only when respondent No.3 was introduced in 2017 for placing orders for sale of country made / foreign liquor.

45. Respondent No.3 had initially filed its return to the petition taking the plea that orders for quantities to be supplied by respondent No.4 to respondent No.3 were placed on the basis of past 20 days' sale at the retail shops. In this regard, the stand of respondent No.3 taken in four paragraphs of return {W.P.(C)No.1059/2018} deserve to be noticed which is as under: -

“15. ... The indent is raised at shop level depending upon the pattern of sale. ...

32. ... The indent is raised as per sale figures since last 20 days ...

40. ... The details of sale of last 20 days are also available in the window according to which the indenting is done shop-wise in the districts. ...

42. ... The details of sale of last 20 days are also available in the window according to which the indenting is done shop-wise in the districts. ...”

46. In the counter-affidavit filed on behalf of respondent No.3 on 14-5-2018 to the return filed by the Chairman of respondent No.4 {W.P.(C)No.1060/2018}, a new plea has been taken that such orders are placed on the basis of stocks required at the retail shops in coming 20 days. It states as under: -

“2. ... there is a mechanism by which 20 days stock is maintained at the retail shop level. This is the mechanism, which operated through the system prepared by the NIC.”

47. It has further been averred in para 3 of the counter-affidavit as under: -

“3. ... initially the decision was taken to maintain the stock of 1 week at the shop level, however, with the progress of the new system it was found to be reasonable to keep the stock of 20 days at a time in a particular shop to avoid out of stock position at instances of surge in demand.”

48. Finally, memo dated 22-3-2017 has been filed along with the counter-affidavit filed by respondent No.3 annexing with the counter stating that quantities are to be ordered based on past 7 days' sale.

The relevant extract of the memo dated 22-3-2017 states as under:-

(ड) परचेस (1) विदेशी मदिरा दुकान के सुपरवाइजर के द्वारा आवश्यकतानुसार आर्डर मदिरा का मांग पत्र दुकान प्रभारी के माध्यम से जिला प्रबंधक को प्लेसमेंट प्रस्तुत करेंगे। विदेशी मदिरा हेतु जिला प्रबंधक प्रचलित ब्राण्ड/लेबल का मदिरा दुकान में उपलब्ध स्टॉक व विगत सप्ताह अलग-अलग ब्राण्ड/लेबलों की हुई बिक्री के आधार पर एक संतुलित मांग पत्र तैयार करेगा, और उसे CSMCL के महाप्रबंधक को प्रेषित करेगा। उनके अनुमोदन के पश्चात् जिला प्रबंधक मांग पत्र के अनुसार मदिरा परेषण मंगवाने हेतु जिला आबकारी कार्यालय से विदेशी मदिरा परिवहन परमिट प्राप्त करेगा।

49. This memo has been issued by respondent No.3 whereas, respondent No.3, according to the State, is only the person to whom the exclusive right has been conferred to sell the liquor.

50. In sum and substance, the stand of respondent No.3 regarding the basis on which quantities are to be procured has been constantly

changed during the course of this proceedings. Firstly, it has been stated that the basis for lifting of stocks from respondent No.4 is past 20 days' sale; then it has been pleaded that the earlier basis was maintaining stocks for next 7 days; and thereafter, it has been pleaded that this was then changed to maintaining stocks for next 20 days. Finally, the only document relied upon in the counter-affidavit shows that the recommendation was procurement based on sales achieved in past 7 days.

51. It is, therefore, quite vivid from the aforesaid stand that there is no clear cut policy governing procurement of liquor particularly framed and brought-out by the State Government either under the Rules of 2017 and the policy made thereafter to govern the sale of liquor while handing over the task to respondent No.3, as the same is apparent from the aforesaid fact and particularly, the State is only relying upon the policy allegedly prepared by the NIC which is said to be prevalent from the excise year 2011-12. The memo dated 22-3-2017 also nowhere states the policy in this regard framed by the State Government. The policy for procurement should be framed by the State Government and with that policy, it should have been handed-over to respondent No.3 as per the provisions contained in Section 18-A(1) and 18-A(2) of the Act of 1915, which has not been done by the State Government.

52. Now, the next question for consideration would be, whether in absence of policy, the court can step-in and direct for framing of policy, as framing of policy is the domain of executive and it is for the executive to frame a policy and to follow the same and the said

legal position is fairly well settled.

53. However, in this regard, the judgment of the Supreme Court in the matter of Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers<sup>15</sup> may be noticed profitably in which the Delhi High Court had issued certain directions to the Delhi Jal Board and other authorities managing the sewerage networks in Delhi to introduce certain measures for safety of the workers engaged for sewerage works in the light of many deaths and mishaps of such workers due to poor working conditions.

These directions were challenged before the Supreme Court on the basis that the same would amount to usurping the powers of legislature by way of Article 226 of the Constitution of India. In the light of the contentions raised therein, the Supreme Court framed the following question, as one of the questions, for consideration before it:

“(2) Whether the directions given by the High Court amount to usurpation of the legislative power of the State?”

Their Lordships while answering the aforesaid question held as under: -

“In view of the principles laid down in the aforesaid judgments, we do not have the slightest hesitation to reject the argument that by issuing the directions, the High Court has assumed the legislative power of the State. What the High Court has done is nothing except to ensure that those employed/engaged for doing work which is inherently hazardous and dangerous to life are provided with life-saving equipments and the employer takes care of their safety and health.”

54. Further, Their Lordships while considering the power and

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jurisdiction of the High Court passed certain directions which are as under: -

“53. With a view to obviate further delay in implementation of the directions contained in the first order passed by the High Court on 20-8-2008, we direct the appellant to ensure compliance of clauses (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) within a period of two months from today and submit a report to the High Court. The appellant shall also ensure that these directions are complied with by the contractors engaged by it for execution of work relating to laying and maintenance of sewer system within the area of its jurisdiction. A report to this effect be also submitted to the High Court within two months. Additionally, we direct that in future the appellant shall ensure that the directions already given by the High Court and which may be given hereafter are made part of all agreements which may be executed with contractors/private enterprises for doing work relating to sewage system.

55. As regards the other clauses of para 9 of the order dated 20-8-2008, the High Court may give necessary directions so that they are complied with and implemented by the State and its agencies/instrumentalities without any delay. The case be listed before the Division Bench of the High Court in the third week of September, 2011 for further orders.”

55. Thereafter, Their Lordships of the Supreme Court in the matter of

State of Punjab v. Brijeshwar Singh Chahal<sup>16</sup> were seized with

the issue of appointment of law officers in the States of Punjab and Haryana. Their Lordships found that the appointments were being made in an ad hoc manner without there being a fair and objective system of appointment. In fact, the system of appointment was found to be “uncanalised and unregulated”. Their Lordships observed that a selection process must be put in place which is fair, credible and transparent. Thereafter, Their Lordships proceeded to list the overarching principles that must govern the process for selection and appointment of law officers and finally proceeded to

pass directions for such appointment and selection of law officers.

56. In the matter of Golden Vats Private Ltd. v. The Chairman, Tamil Nadu State Marketing Corporation Ltd. (TASMAC) and others<sup>17</sup>, the Madras High Court, dealing with similar issue held that Government having largesse over supply of liquor should deal with all suppliers equally and not arbitrarily and issued certain directions to the State / Corporations by holding as under: -

“20. A State may either completely prohibit a trade or business in liquor and create monopoly either in itself or in any other agency and, furthermore, it can, for the purpose of issuing the licence, adopt any mode with a view to maximise its revenue, but, while doing so, it must not act arbitrarily. The State, while carrying on business by way of parting with its privilege or distribution of largesse, must conform to the equality clause enshrined in Article 14 of the Constitution.

21. Largesse and instrumentality of the State are the wealth of the nation. It shall be the duty of the public authority to give equal opportunity to the citizens to enjoy their rights guaranteed under the Constitution. If so, the Respondent-Corporation, having a largesse over the supply of liquor after getting due purchase from all concerned in equal manner, may not be justified to have their own whims and fancies of keeping certain things in their domain and do certain things without any Guidelines. Therefore, the power of the Authorities has to be exercised fairly and reasonably affording equal rights to the stakeholders of the business.

22. The right of trade guaranteed under [Article 19 \(1\) \(g\)](#) of the Constitution has to be evenly distributed among all citizens, particularly the persons, who are the stakeholders of their rights in the parameters and the procedures, for which fair play and reasonableness are to be displayed with utmost care and caution without any kind of discrimination.

23. Having regard to the provisions of [Article 14](#) of the Constitution of India, a State, within the meaning of [Article 12](#), cannot distribute its largesse at its own sweet will, in which regard the Court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the Government or local body

in an arbitrary manner. Nothing should be done by them which gives an impression of bias, favouritism or nepotism.

24. Where a Corporation is an instrumentality or agency of the Government, it would, in the exercise of its power or discretion, be subject to the same Constitutional or Public law limitations as Government. The Rule inhibiting arbitrary action by Government must apply equally where such Corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes, but its action must be in conformity with some principle which meets the test of reason and relevance. This Rule also flows directly from the Doctrine of Equality embodied in [Article 14](#).

25. It is well-settled that [Article 14](#) strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle, which is non-discriminatory. It must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The Principle of Reasonableness and Rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by [Article 14](#) and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.

26. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. [Article 14](#) speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade and, at the same time, it has the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The Order of Blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person, who is on the Approved List, is unable to enter into advantageous relations with the Government because of the Order of Blacklisting. A citizen has a right to claim equal treatment to enter into a contract which may be proper,

necessary and essential to his lawful calling. It must, therefore, follow as a necessary corollary from the Principle of Equality enshrined in [Article 14](#) that though the State is entitled to refuse to enter into relationship with any one, yet, if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid, unless it is supported or justified on some rational and non-discriminatory ground.

27. Equality of opportunity is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by public interest and should inspire public confidence.

28. Also, [Article 19\(1\)\(g\)](#) of the Constitution guarantees that all citizens shall have the right to practise any profession or to carry on any occupation, trade or business. However, in terms of [Article 19\(6\)](#), this right can be restricted by a statute imposing reasonable restrictions. A combined reading of clauses (1) & (6) of [Article 19](#) makes it clear that a citizen has a fundamental right to carry on any trade or business and the State can make a law imposing reasonable restrictions on the said right in the interest of the general public. It is, therefore, obvious that unless dealing in liquor is excluded from "trade or business", a citizen has a fundamental right to deal in that commodity.

29. In the instant case, the Petitioner, having been granted all licences and renewals by the Authorities, cannot be subjected to any kind of inequality and imbalances among others, that too in matters of business, like IMFL. Therefore, this Court is of the considered opinion that the action of the authorities in not placing the Supply Orders and Indents to the Petitioner on par with others is arbitrary, unreasonable and against the Constitutional provisions. Further, no Guidelines or yardstick is framed by the Respondents to issue supply or purchase orders to lift IMFL from the Manufacturers. The Petitioner, who is one of the IMFS Manufacturers, should be given equal treatment in business opportunity like that of others and cannot be singled out or discriminated. In any sale of consumables, which is monopolistic in nature, it is the choice of the consumer that has to prevail and not the Fourth Respondent. There should be a-la-carte system and consumer, who is the master of his choice, should be allowed to purchase according to his wishes. The consumer should have a choice which may vary based upon the quality of IMFL

brands. Hence, all IMFL brands should be made available in the Fourth Respondent shops across the counter, permitting the consumers to select the brands of their own choice.

30. Fourth Respondent being the sole marketing agency in the State of Tamil Nadu, the very existence of the Petitioner is only on the basis of Supply Orders and equal indent to be issued to its Premium Brands. The Fourth Respondent being also a State has to be fair and transparent in its approach and particularly should have a scientific and commercial data on the basis of the consumer choice and liking for placing the orders with various IMFL manufacturers and they cannot act in an arbitrary and discriminatory manner. Hence, proper Guidelines on the basis of commercial and scientific data and on the basis of consumer choice in a most transparent manner have to be framed and implemented by the Fourth Respondent in the matter of placing Supply Orders and Indent for purchasing the Premium Brands.

31. Accordingly, the Fourth Respondent is directed to take the average monthly retail sale of each of Petitioner's Premium Brands right from the date of launching till October, 2013, and to place the difference of backlog of Supply and Indent Orders from July 2013 onwards and continue to place Supply and Indent Orders on the average monthly sale basis. Moreover, in the interest of all the manufacturers of IMFL, stakeholders and consumers and to avoid further controversies, the Fourth Respondent is directed to frame necessary Guidelines as to the issuance of Orders and Indents to the manufacturers, to maintain equality."

57. Similarly, the Uttarakhand High Court in the matter of **United Spirits Limited v. Uttarakhand Agricultural Produce Marketing Board and others**<sup>18</sup>, while dealing with similar issue, directed respondent No.3 Company to procure foreign liquor in fair, transparent and reasonable manner, as under: -

"25. 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.

26. 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.

27. 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. This disposes of both the writ petitions.”

58. It is the case of the writ petitioners that officers of the State Government. (respondents No.1 and 2) are also working for respondent No.3 Corporation by way of additional charge and are performing duties in the capacity of excise officers and officers of respondent No.3 as well. It has been denied by respondent No.3 on the ground that those officers are on deputation sent by the State Government. Copies of those orders have been filed as Annexures R-3/22 {W.P.(C)No.1060/2018}. One of the orders filed as order dated 22-3-2017 would show that most of the officers were given additional charge in respondent No.3 Corporation on the posts of General Manager, Deputy General Manager, Manager, Deputy Manager or Assistant Manager, Excise Constable etc.. Even the Joint Secretary, Excise, Government of Chhattisgarh has been made Working Director in respondent No.3 Corporation. It is pertinent to mention here that trade in liquor in the State of Chhattisgarh is controlled and regulated by the officers of

respondents No.1 and 2 and those officers of respondent No.2, who are working on additional charge with respondent No.3 will have a commercial interest and that will lead to a situation of conflict of interest, as such, an act of acting in dual capacity is impermissible in law. (See Rajendra Shankar Shukla (supra) – paras 36, 37 and 39.)

59. On the basis of above-stated analysis, my conclusions are as under: -

(1) A citizen has no fundamental right to carry-on any trade or business in liquor or beverage, as trade in liquor has been regarded as *res extra commercium*, but once the State permits trade and business in liquor, it cannot discriminate between person or suppliers who are qualified to carry-on trade or business.

(2) Section 18-A(1) of the Act of 1915 was introduced with effect from 21-4-2017 in the Act of 1915 giving power to the State Government to grant exclusive right for sale of liquor to any Corporation wholly owned and controlled by the State Government. Section 18-A(2) of the Act of 1915 was also introduced giving power and jurisdiction subject to the rules made by the State Government to grant necessary license to the Corporation owned and controlled by the State Government. The Rules of 2017 have also been framed by the State Government in this regard in its rule making power under Section 62(d) of the Act of 1915.

(3) The State Government has constituted respondent No.3, a Corporation namely, Chhattisgarh State Marketing Corporation Limited; though sale of liquor has been handed-over to the said

Corporation, but no order general or special has been passed by the State Government giving exclusive right for sale of liquor to the Corporation as provided under Section 18-A(1) of the Act of 1915. Likewise, the Excise Commissioner has also not granted any license to respondent No.3 Corporation as mandated under Section 18-A(2) of the Act of 1915, which is clearly impermissible in law. The State Government and thereafter, the Excise Commissioner, both, have failed to perform their statutory function envisaged under Section 18-A(1) & 18-A(2) of the Act of 1915.

(4) The petitioners have placed sufficient data on record to show that they are being discriminated by respondent No.3 in procurement of liquor for want of a fair and transparent policy for procurement of liquor.

(5) The State Government has not come out on record with a clear and transparent policy of procurement of liquor except relying upon the website designed by NIC and the Rules of 2017 stating that it has resulted in a neutral non-apprehending and transparent procedure for sale of liquor while adopting the return and stand taken by respondent No.3 Corporation and the said Corporation has changed its stand regarding procurement of liquor during the hearing of these petitions.

(6) The officers of respondents No.1 and 2 are holding additional charge and working as officers with respondent No.3 on various posts such as General Manager, Deputy General Manager, Manager, Deputy Manager, Assistant Manager, Excise Constable etc.. Even the Joint Secretary of the Government is working as

Working Director in respondent No.3, which is in conflict with the principle of law laid down in Rajendra Shankar Shukla (supra).

60. It is held that in any sale of consumables (liquor), which is monopolistic in nature, it is the choice of consumers that has to prevail and not the choice of either of the respondents. As held in Golden Vats Private Ltd. (supra) by the Madras High Court, there should be a-la-carte system and consumer, who is master of his choice, should be allowed to purchase according to his wishes and all the brands should be made available in the shops across the counter permitting the consumers to select the brands of their own choice.

61. Accordingly, the State Government – respondent No.1 is directed to consider the above-mentioned factors mentioned in paragraphs 59(1) to (6) of this order and thereafter to frame necessary guidelines to procure liquor as to the issuance of Orders and Indents to the manufacturers / petitioners, to maintain equality in procurement of liquor, within a period of four weeks from the date of receipt of a copy of this order.

62. The writ petitions are disposed of with the aforesaid observations and directions leaving the parties to bear their own cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1059 of 2018

Pernod Ricard India Pvt. Ltd.

Versus

State of Chhattisgarh and others

AND

Writ Petition (C) No.1060 of 2018

United Spirits Limited and another

Versus

State of Chhattisgarh and others

Head Note

A citizen has no fundamental right to carry-on any trade or business in liquor, as trade in liquor has been regarded as *res extra commercium*, but once the State permits trade and business in liquor, it cannot discriminate between person or suppliers who are qualified to carry-on trade or business.

किसी व्यक्ति को शराब का व्यापार या व्यवसाय करने का कोई मौलिक अधिकार प्राप्त नहीं है क्योंकि शराब को वाणिज्य से परे वस्तु (रेस एक्स्ट्रा कॉमर्सियम) माना गया है परन्तु जब राज्य शराब के व्यापार तथा व्यवसाय की अनुमति दे देता है, यह उन व्यक्तियों अथवा प्रदायको में भेदभाव नहीं कर सकता जो व्यापार अथवा व्यवसाय करने हेतु पात्र हैं।