

SECRETARY TO GOVT., TAMIL NADU AND ORS.

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v.

K. VINAYAGAMURTHY

AUGUST 26, 2002

[G.B. PATTANAİK, RUMA PAL AND K.G. BALAKRISHNAN, JJ.] B

*Excise policy :*

*Tamil Nadu Prohibition Act, 1927—Tamil Nadu (Retail Vending) Rules, 1989—Rules 13,14 and 30—Excise Policy—Retail vending of Indian made foreign liquor—Augmentation of excise revenue—Grant of privilege and issuance of licence therefor—Renewal of licence of existing licensees—State Government revising policy—Abolishing renewal of licence and directing fresh draw of lots—Revised policy challenged—High Court holding it to be arbitrary—On appeal held, High Court was right since the revised policy was only to replace the existing licences by a fresh set of persons by a fresh drawal of lot and not for augmentation of excise revenue.* C D

**Appellant-State Government adopted a policy for licensing of Indian made foreign liquor retail vending shops. There was grant of privilege and issuance of licence therefor and existing licensees could apply for renewal of license. State Government changed the existing policy doing away with the renewal of licences of existing licensees and directed fresh draw of lot. Existing licensees challenged the same. High Court held that abolition of renewal of the existing licences and following the procedure of fresh draw of lot was unreasonable and arbitrary. Hence the present special leave petitions.** E F

**Petitioners contended that High Court was in error in interfering with revised policy since there is no inherent right of a citizen to deal with the liquor; that the legislature of a state or the executive government is fully competent to regulate business of vending intoxicating liquor to mitigate its evils or to suppress it entirely; that the State Government altered the existing policy for augmentation of excise revenue; that there is no right of renewal of licences with the grantee of privilege and amended provisions has been engrafted for new excise year and also that since the existing licensees failed to lift the minimum off-take quantity of liquor new set of policy was formulated for augmentation of the excise revenue.** G H

**A** Respondent contended that High Court was justified in striking down only that part of government order which was held to have no nexus with the object of augmentation of excise revenue. It was further contended that licensees are agreeable to pay privilege fee as decided by Government and also would be bound by limit of off-take of liquor to be decided by excise authorities.

**B** Dismissing the petitions, the Court

**HELD:**1. No citizen can claim any inherent right to sell intoxicating liquor by retail. It cannot be claimed as a privilege of a citizen of a State. Any restriction which State brings forth, must be a reasonable restriction within the meaning of Article 19(6) of the Constitution and reasonableness of restriction would differ from trade to trade and no hard and fast rule concerning all trades can be laid down. [690-F, G]

**2.1.** In the instant case, State Government did not purport to abolish trade in intoxicating liquor but purports to change its policy intended for augmentation of excise revenue. Under the new set of Government orders, there have been large number of shops to deal with retail vending of Indian made foreign liquor, there has been re-categorisation of shops, re-adjustment and relocation of retail shops and increase in the amount of privilege fee. High Court upheld all these conditions on the ground that they related to the augmentation of excise revenue. Right of renewal being unequivocally indicated in the excise policy of 2001-2002, as reflected in the G.O.Ms. No.115 for the block period of 2001-2004, State Government could not have annulled it and directed afresh the self same procedure to be adopted again by drawal of lots for settling of the privileges in respect of 7,000 shops since that has nothing to do with the augmentation of excise revenue. High Court rightly concluded that the same was arbitrary and whimsical only to replace the existing licensees by a fresh set of persons by a fresh drawal of lot. Even though licensees under earlier policy may not claim an absolute right of renewal but it cannot be denied that under G.O.Ms. No.115 read with the excise policy evolved for the block period 2001-2004 and relevant provisions of Act and Rules, contemplate a case of renewal and is also apparent from the recommendations of Excise Commissioner on the basis of which State Government came forward with the revised policy and a new set of rules by enacting G.O.Ms. Nos.128, 129 and 130. [690-G, H; 691-A-D]

**2.2.** It is affirmed that the portions of G.O.Ms. dealing with non-

renewal of privileges granted to existing licensees subject to their fulfilling the other conditions of provisions of Act and rules are arbitrary. The conclusion of High Court, regarding dispensing with the right of renewal of the existing licensees under the present set of G.O.Ms. which fell before High Court for consideration is not interfered. Necessarily, therefore, the appropriate excise authority will have to decide the case of applicants for renewal of licences in accordance with Rules as well as other conditions of licences. Further the manner in which High Court issued the directions, are not in conformity with rules for issuance of a mandamus. Once court comes to the conclusion that certain provisions of Act or Rules or Government order is arbitrary, then Court would strike down the same, leaving the matter for appropriate authority under statute to deal with cases of applicants. In that view of the matter the directions given by High Court are modulated. It is directed that competent authority/State Government shall consider application for renewal of licence in accordance with law and would be entitled to include all conditions in licence, including condition of minimum off-take. The licensees of privileges would be bound by the enhancement of the privilege amount as well as re-categorisation of shops contained in three G.O.Ms. The facility of renewal would be available to those existing licensees, who had remitted the requisite amount on or before 31st of July, 2002. It is further directed that privilege fee already paid by these licensees for the Excise Year 2002-2003 shall be duly adjusted. [691-E-H; 692-A-C]

*Madras City Wine Merchants' Association and Anr. v. State of Tamil Nadu and Anr.*, [1994] 5 SCC 509, referred to.

CIVIL APPELLATE JURISDICTION : Petition for special leave to Appeal (C) No.14735/2002.

From the Judgment and Order dated 24.7.2002 of the Madras High Court in Writ Appeal No. 2209 of 2002.

WITH

SLP (C) Nos. 15724, 15725, 15726, 15727 and 15728 of 2002.

K.K. Venugopal, C.S. Vaidyanathan, R. Muthukumarasamy, A.A.G. for State, K. Mahendran, Spl. Govt. Govt. Pleader, V. Balaji and P.N. Ramalingam for the Petitioners.

P. Chidambaram, S. Ganesh, K.M. Vijayan, Ranjit Kumar, R. Anand

**A** Padmanabhan, R. Vidhuthalai, K. Ramu, M. Bhaskar, J. Ravindran, Pramod Dayal, Ms. Amritha Sarayoo, G. Ramakrishna Prasad, J. Pothiraj, K.V. Mohan, V.B. Singh, Rakesh K. Sharma, Ms. Monika Tripathy, K.K. Mani and A.R.L. Sundaram, for the Respondent.

The Judgment of the Court was delivered by

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**PATTANAİK, J.** This batch of Special Leave Petitions are by the State of Tamil Nadu, directed against the Judgment of the Division Bench of Madras High Court, dealing with the licensing system for retail vending of Indian made foreign liquor. The Excise Year is for the period of 1st of August of the year in question till the 31st of July of the next year. In June, 2001, the Government of Tamil Nadu came forward with a Policy to be adopted for licensing of the Indian made foreign liquor retail vending shops for the block period 2001-2004. The said Policy was issued under G.O.Ms. No. 113. For the aforesaid block period, it was decided that the retail vending shops for the entire State should be fixed at 6000 and the privilege fee shall be worked out on the notified area basis, taking the average privilege fee of the last three years and providing for some suitable increase. It was also stipulated that the licensee should lift the minimum off-take fixed for the shop by the licensing authority and in case of failure to lift the same, the licensee will be liable to pay a penalty in proportion to the loss of revenue due to non-lifting of stocks and if there is still further default, then the licence would be liable to be cancelled. In accordance with the aforesaid policy decision, amendments to the Tamil Nadu Liquor (Retail Vending) Rules, 1989 were made, which were issued under G.O.Ms. No. 115 dated 22nd of June, 2001. The Prohibition Commissioner also recommended a new licensing system for grant of licences to the Indian made foreign liquor retail vending shops for the block year 2001-2004, which was accepted by the State Government and the necessary amendments to the Retail Vending Rules were made. Under Rule 13 of the amended rules, when the number of eligible applications does not exceed the number of shops notified for an area, then all applicants shall be selected for the grant of privilege. But when the number of applications in respect of the shops in a notified area is more than the number of shops in that area, the selection of applicant for grant of privilege shall be decided by drawal of lot by the licensing authority in the presence of the Collector and the applicants who prefer to be present. Rule 14 of the amended rules provided that privilege amount be fixed by the Commissioner, on the basis of the guidelines approved by the Government. Rule 30(2) provides for the lifting of the minimum off-take of the liquor fixed for the

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shops by the licensing authority based on the guidelines issued by the Government and the consequences to follow, in case the licensee fails to lift the minimum off-take. Sub-rule (7) of Rule 30 provides that the applicant on being granted licence, shall abide by the provisions of the Tamil Nadu Prohibition Act, 1937, as well as the Tamil Nadu Liquor (Retail Vending) Rules, 1989, as amended from time to time and the terms and conditions of the licence granted thereunder.

In accordance with the aforesaid Excise Policy and the provisions of the Act and the Rules, the exclusive privilege in respect of different retail vending shops of Indian made foreign liquor were settled with the applicants and licences were also issued by the licensing authority in favour of them for carrying on the business. Even though the policy was for the block period of 2001-2004 and an existing licensee could apply for renewal of his licence, for the excise year 2002-2003, the Government of Tamil Nadu changed the policy by issuance of three G.O.Ms. of the same date being G.O.Ms. Nos. 128, 129 and 130. The aforesaid three G.O.Ms. indicate that the Government felt that there is a need for increasing the number of shops in unserved areas that are not notified and also in the existing notified areas where there is further potential and demand identified by the Collectors. It was also indicated that the privilege amount in respect of the shops located in areas adjoining the Corporations and Municipalities could be enhanced and as such there is a need to re-categorise the shops and to re-fix the privilege amount. The Commissioner of Prohibition and Excise also suggested that along with the increase in the number of notified shops and re-fixation of the privilege amount for the shops located in peripheral areas of Corporations/Municipalities, as well as the revision of privilege amount for augmenting the excise revenue, the Government should consider whether instead of renewing the licences of the existing licensees, all the shops may be allotted afresh in accordance with earlier G.O.Ms. No. 115 dated 22nd of June, 2001. In other words, it suggested to have a fresh draw of lot. In accordance with the aforesaid recommendations contained in G.O.Ms. No. 128, the State Government passed the necessary orders, directing that the provision for renewal of licences prescribed in Rule 14 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 be repealed and all the 7000 shops including the re-categorised shops shall be disposed of, as per the procedures laid down in G.O.Ms. No. 115 dated 22nd June, 2001. Consequential amendments of certain rules were also made.

The existing holders of the privilege in question who had obtained licences for carrying on the business for the excise year 2001-2002, approached

A the High Court of Madras by filing writ petitions, challenging the validity of the Government Order Nos. 128, 129 and 130. The Learned Single Judge, on entertaining the writ petitions, granted interim orders on 16th of July, 2002, directing ad hoc renewal of licences for a period of three months in respect of the petitioners who had approached the Court. The State preferred the appeal to the Division Bench against the aforesaid interim order of the learned

B Single Judge and the Division Bench while being in seisin of appeal against the interim order, passed by the Single Judge, brought before it the writ petitions which were pending before the Single Judge and disposed them of together by the impugned judgment dated 24th of July, 2002. On considering the submissions made at the Bar as well as the new excise policy and

C introduction of G.O.Ms. Nos. 128, 129 and 130, the Division Bench of the High Court came to the conclusion that though the excise policy is a subject of the policy-maker and it relates to a trade, which cannot be claimed as a matter of right by any citizen, but the Court would be entitled to probe into the reasonableness or otherwise of the Governmental orders and examine whether they can be sustained on the touchstone of the arbitrariness. The

D Division Bench sustained the Government orders, so far as they relate to the fiscal policy of the government and the provisions made therein for augmentation of the excise revenue. It rejected the contention of the privilege holders and held that doctrine of promissory estoppel and legitimate expectation will have no application. But so far as the provisions dealing with the abolition of the renewal of the existing licence holders and to follow

E the procedure in respect of the shops by a fresh lot, the Court came to the conclusion that the aforesaid provision has absolutely no nexus with the object of augmentation of excise revenue and it was only meant to disable the existing licensees from opting for the renewal notwithstanding that the excise policy as enunciated in June, 2001 was for the block period 2001-2004. The

F Court held the aforesaid revised excise policy to be wholly unreasonable and arbitrary, having no nexus at all with the object of augmentation of excise revenue for which purpose the new policy was introduced. The Court finally disposed of the matter with the following directions:

G “(i) The Government is at liberty to go ahead with the grant of privilege of retail vending of Indian Made Foreign Liquor to the extent of 7,000 shops as decided.

H (ii) But the Government shall adhere to the places of retail vending which have been licenced for the excise year 2001-2002 and held by the petitioners and renew the licence of the petitioners for the excise

year.2002-2003 on the petitioners' remittance of the privilege amount on the basis of the amount fixed in G.O.Ms. No. 129 dated 8.7.2002 and also taking into account the re-categorisation of the shops for the purpose of levy of the privilege amount. A

(iii) The above facility of renewal to the petitioners shall be made available if the petitioners remit the requisite amounts on or before 31st of July, 2002. B

(iv) For any reason, if there is a delay in renewal, the petitioners shall be entitled to vend the Indian Made Foreign Liquor in retail on payment of the proportionate privilege amount till the grant of licence. C

(v) The Government, the Commissioner and all the District Collectors shall be entitled to re-locate the shops out of 7,000 at the places they feel expedient, but only after safeguarding the shops which are being run by the petitioners." C

It is this order of the Division Bench of the Madras High Court, which is the subject matter of challenge in all the special leave petitions. D

After hearing Mr. K.K. Venugopal, the learned senior counsel, appearing for the State of Tamil Nadu at great length and Mr. P. Chidambaram, the learned senior counsel, appearing for the respondents, though we did not find any infirmity with the impugned judgment of the Division Bench of Madras High Court and would have normally dismissed the special leave petitions, but since Mr. Venugopal had advanced a lengthy argument and certain directions given in the impugned judgment require modulation, we thought it appropriate to notice and answer the same, while dismissing the special leave petitions. E F

Mr. K.K. Venugopal, the learned senior counsel, appearing for the State contended that there is no inherent right in a citizen to sell intoxicating liquor by retail and it is not a privilege of a citizen. As it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The legislature of a state or the executive government is fully competent to regulate the business of vending intoxicating liquor to mitigate its evils or to suppress it entirely. That being the right of a citizen to deal with the liquor and by the impugned orders the State Government having altered the existing policy for augmentation of excise revenue, the same could not have been interfered with by the High Court. Mr. Venugopal also further contended that there is H

A no right of renewal of the licences with the grantee of the privilege and the amended provisions having been engrafted for the new excise year, the High Court committed error in holding the same to be arbitrary. In support of this contention, reliance was placed on the decision of this Court in the case of *Madras City Wine Merchants' Association and Anr. v. State of Tamil Nadu and Anr.*, [1994] 5 SCC 509. According to Mr. Venugopal, in accordance with the Rules in force, the existing licensees having failed to lift the minimum off-take quantity of liquor, the State has suffered a loss in excise revenue and, therefore, for augmentation of the excise revenue, a new set of policy having been formulated in respect of a trade over which no citizen can claim a fundamental right, the Court was not justified in interfering with the same

B on the ground that the decision to have a fresh lot for all the shops is arbitrary and unreasonable.

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Mr. Chidambaram, the learned senior counsel appearing for the existing licensees, on the other hand contended that the High Court was fully justified in striking down only that part of the government order which was held to have no nexus with the object of augmentation of excise revenue. He further contended that the licensees are agreeable to pay the privilege fee as decided by the Government and also would be bound by the limit of off-take of liquor to be decided by the excise authorities. According to Mr. Chidambaram, there is no error in the impugned judgment, which requires any interference by this Court in exercise of powers under Article 136 of the Constitution.

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We have carefully considered the rival submissions at the Bar as well as the decision cited in support of the contention raised. So far as the trade in noxious or dangerous goods are concerned, no citizen can claim to have trade in the same and the intoxicating liquor being a noxious material, no citizen can claim any inherent right to sell intoxicating liquor by retail. It cannot be claimed as a privilege of a citizen of a State. That being the position, any restriction which the State brings forth, must be a reasonable restriction within the meaning of Article 19(6) and reasonableness of the restriction would differ from trade to trade and no hard and fast rule concerning all trades can be laid down. The Government of Tamil Nadu does not purport to abolish the trade in intoxicating liquor and what it purports to do is to change its policy intended for augmentation of excise revenue. With that end in view under the new set of Government orders, there have been large number of shops to deal with retail vending of Indian made foreign liquor, there has been re-categorisation of the shops, there has been re-adjustment and relocation of the retail shops, there has been increase in the amount of

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privilege fee and the High Court has upheld all these conditions on the ground that they relate to the augmentation of excise revenue. But so far as the right of renewal is concerned, the same having been unequivocally indicated in the excise policy of 2001-2002, as reflected in G.O.Ms. No. 115 for the block period of 2001-2004, the State Government could not have annulled the same and directing afresh the self same procedure to be adopted again by drawal of lots for settling of the privileges in respect of 7,000 shops inasmuch as that has nothing to do with the augmentation of excise revenue. To our query, as to how this should be helpful in achieving the augmentation of excise revenue, Mr. Venugopal was not able to satisfy us and in our view, the High Court rightly came to the conclusion that the aforesaid decision was nothing but an arbitrary and whimsical one taken by the State Government, only to replace the existing licensees by a fresh set of persons by a fresh drawal of lot. Even though the licensees under the earlier policy may not claim an absolute right of renewal but it cannot be denied that under G.O.Ms. No. 115 read with the excise policy evolved for the block period 2001-2004 and the relevant provisions of the Act and Rules, contemplate a case of renewal and this is also apparent from the recommendations of the Excise Commissioner himself on the basis of which the State Government came forward with the revised policy and a new set of rules by enacting G.O.Ms. Nos. 128, 129 and 130. We have, therefore, no hesitation in affirming the conclusion of the Division Bench of the Madras High Court that the portions of G.O.Ms. dealing with the non-renewal of the privileges granted to the existing licensees subject to their fulfilling the other conditions of the provisions of the Act and the rules to be arbitrary. We are, therefore, not persuaded to interfere with the conclusion of the High Court, so far as it deals with the dispensing with the right of renewal of the existing licensees under the present set of G.O.Ms. which fell before the High Court for consideration. Necessarily, therefore, the appropriate excise authority will have to decide the case of the applicants for renewal of the licences in accordance with the Rules as well as the other conditions of the licences. Mr. Chidambaram very fairly stated that none of the respondents have any grievances to be governed by the rules and conditions of licence including the conditions providing for a minimum off-take. But the manner in which the High Court has issued the directions, appears to us not to be in conformity with the rules for issuance of a mandamus. Once the court comes to the conclusion that certain provisions of the Act or the Rules or the Government order is arbitrary, then the Court would strike down the same, leaving the matter for the appropriate authority under the statute to deal with the cases of the applicants. In that view of the matter, the directions contained in Clause (ii), Clause (iii) and Clause (iv)

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A require modulation. We, therefore, substitute the aforesaid clauses of the impugned judgment by the following directions:

B The competent authority/the State Government shall consider the application for renewal of the licence in accordance with law and would be entitled to include all conditions in the licence, including the condition of minimum off-take. Needless to mention that the licensees of the privileges would be bound by the enhancement of the privilege amount as well as the re-categorisation of the shops contained in the three G.O.Ms., referred to earlier. It is also made clear that the facility of the renewal would be available to those of the existing licensees, who had remitted the requisite amount on or before 31st of July, 2002, as ordered by the High Court itself. We also further direct that the privilege fee already paid by these licensees for the Excise Year 2002-2003 shall be duly adjusted. Clauses (i) and (v) of the directions contained in the impugned judgment shall remain as it is.

D Mr. Venugopal had referred to an affidavit which had been filed in this Court by the Secretary to the Government of Tamil Nadu, Prohibition and Excise Department, wherein it had been stated that the State Government will be willing to consider the grant of renewal in favour of the existing licensees, subject to their giving an undertaking to this court that they would abide by the rules and conditions relating to the minimum off-take during the current year as well as previous excise year 2001-2002 and would withdraw the writ petitions filed by them, which are pending in the High Court of Madras. So far as the minimum off-take for the excise year 2002-2003 is concerned, Mr. Chidambaram, appearing for the respondents, fairly stated that the respondents would abide by the same. But so far as the minimum off-take for the previous excise year is concerned, the same not having been there at the time of grant of the privilege and issuance of licence, but having been introduced at a later point of time, the legality of the same is the subject matter of consideration before the High Court of Madras and we express no opinion on the same.

F These special leave petitions are accordingly dismissed with the modulated directions, as stated earlier.

G N.J.

Petitions dismissed.