M/S KHODAY DISTILLERIES LTD. ETC. A

v.

STATE OF KARNATAKA AND ORS.

DECEMBER 15, 1995

[J.S. VERMA, K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.] B

Constitution of India, 1950 : Article 14.

Excise Rules compelling manufacturers to sell liquor to specified Government company only—Government company facing some problems in C *discharge of its duties—Held : does not render the rules providing for licence arbitrary or violative of Article 14—Export of liquor outside India or to other States—Loss of rebate in excise duty—No violation of article 14—Rules apply to all persons similarly situated—No discrimination in the traditional sense.*

Excise Laws : D

Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 : Rule 3 (11)—Distributor Licence—To be issued only to a State owned company—Creation of monopoly—Does not take the licence outside the ambit of rule-making authority.

E

Karnataka Excise Act, 1965 :

Section 71—Amended Rules—Within the scope of delegated authority.

Andhra Pradesh (Foreign Liquor and Indian Liquor) Rules, 1970 :

F

Rules 4(2) and 11(2)—Fee for approval of labels on bottles of liquor—Enhancement of—From Rs. 100 to Rs. 25,000—Approval to be obtained every year—Fee constitutes only small percentage of total turnover—Imposition cannot be considered exhorbitant or wholly arbitrary.

G

A distributor licence was prescribed for the first time under Rule 3(11) of the amended Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. The licensee was required to establish not less than one depot in each district within the State or within that part of the State where it proposed to distribute or sell such liquor. The rule provided that a distributor licence should be issued only to such company owned or H

A controlled by the State Government as the State Government might specify. The licensees were required to sell the liquor only to a holder of a distributor licence. The holder of such a licence could only be a company owned or controlled by the State Government. The State Government had specified Mysore Sales International Ltd. (MSIL) as a company so
B specified and had granted it to the distributor licence.

In the state of Andhra Pradesh, fee for the approval of any one variety of labels to be affixed on bottles of liquor was either enhanced from Rs. 100 to Rs. 25000 or a fee of Rs. 25000 for approval of lables was introduced for the first time under Rules 4(2) and 11(2) of the Andhra
C Pradesh (Foreign Liquor and Indian Liquor) Rules, 1970. The approval had to be obtained every year.

The appellants challenged the validity of the Karnataka rules prescribing a distributor licence and also enhancement of fees for the approval of labels under the Andhra Pradesh Rules before the High Courts
D which repelled the challenge. Aggrieved by the High Courts' judgments the appellants preferred the present appeals.

On behalf of the appellants it was contended that by compelling them to sell liquor only to MSIL their fundamental rights under Article 19(1)(g)
E of the constitution were violated; that the Rules were *ultra vires* because they went beyond the scope of the delegated authority; that there was no legislative policy prescribed by the Karnataka Excise Act, 1965 for a distributor licence; that the Rules were arbitrary, unreasonable and caused undue hardship and hence violative of Article 14 of the Constitution; that the rules were manifestly arbitrary because their purpose was to
F stop evasion of excise duty; that MSIL was not competent to discharge its obligations and did not have the necessary infrastructure; that there was hardship relating to excise duty; and that the enhancement of the fee for approval of labels from Rs. 100 to Rs. 25,000 had been sudden, exhorbitant, highly arbitrary and hence violative of Article 14 of the Constitution.

G On behalf of the respondents it was contended that the Government company was bound to purchase the liquor if there was demand from the wholesalers; that the Government company was expected to act *bonafide*; and that MSIL had the necessary infrastructure.

H Dismissing the appeal, this Court

HELD : 1.1. The protection of Article 19(1)(g) of the Constitution is not available to the appellants. A

Khoday Distilleries Ltd. & Ors. v. *State of Karnataka & Ors.*, [1995] 1 SCC 574, relied on.

1.2. A distributor licence is not something different from or alien to the licences contemplated and prescribed under Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. A distributor licence is basically no different from the licences so prescribed. In fact the licences cover the whole gamut of activities from manufacture to consumption of liquor. Clause (11) of the amended Rule 3 which prescribes a distributor licence refers to it as a licence to deal in the products of all distilleries or breweries or wineries in the State, at a licence to import liquor from outside the State for the purpose of distribution or sale within the State; or to export liquor outside the State. This is clearly a licence to deal in liquor in the above manner. [770-F-G] B C D

1.3. A distributor licence, therefore, is only a licence to deal in liquor by sale and purchase of liquor. This activity is not something different from what is contemplated under the Karnataka Excise Act, 1965 itself or in respect of which the rule-making authority has been delegated to the State under Section 71. The mere fact that a monopoly of distributor licence is sought to be created, does not take the licence outside the ambit of the Act. The Act itself provides that the number of licences can be regulated by the State. If the State chooses to regulate licences by providing that the licence shall be granted only to a company owned by the State, it cannot be said that such a licence is something which is outside the purview of the Act or the rule-making authority of the State under the Act. [771-C-D] E F

1.4. The Act is clearly within the legislative competence of the State Legislature. Nobody has challenged it. The amended Rules are within the scope of the delegated authority under Section 71. If the main Act is within the legislative competence of the State Legislature and the Rules have been framed under a validly delegated authority and are within the scope of that authority, the Rules cannot be challenged on the ground of lack of legislative competence. If the Act is valid, so are the Rules. [771-F] G

2.1. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test to Article H

A 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to B emanate from an authority delegated with the law-making power.

[771-H, 772-A]

Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. *Union of India & Ors.,* [1095] 2 SCR 287, relied on.

C 2.2. The apprehension that MSIL may act arbitrary or capriciously and may purchase or not purchase liquor from the manufacturers at its own sweetwill does not appear to be justified. It is not correct to state that the Government company is at liberty to purchase or not to purchase the liquor produced by the petitioners. It is bound to purchase the liquor if D there is demand from the wholesalers. The Government Company is expected to act *bona fide* and with responsibility and it is not correct to contend that the Government agency will be interested only in a particular manufacturer. MSIL has not merely established several depots but has carried on distribution of liquor in the State of Karnataka on a large scale. MSIL receives orders for supply from various purchasers. These orders E specify the brand of liquor and the company from which the supplies are required. Accordingly MSIL places orders with the concerned companies for the brands of liquor which are demanded by their purchasers. It is on the basis of these demand regulations received by MSIL that MSIL places orders. There is, therefore, no question of any hardship being caused to F the appellants by reason of the fact that their sales have to be channelled through an intermediary. Once the Rules oblige the manufacturers to supply their product only to the company holding the distributor to place orders with the suppliers concerned whenever demand for the particular product is received by it. [773-C-H, 774-A-B]

G *State of Madhya Pradesh & Ors.* v. *Nandlal Jaiswal & Ors.,* [1987] 1 SCR 1, referred to.

2.3. Looking to the chanalizing role of MSIL, the fear of discrimination between different suppliers expressed by the appeallants does not H appear to be justified. [774-C]

Maganlal Chhagganlal (Pvt.) Ltd. **v.** *Municipal Corporation of Greater Bombay & Ors.,* **[1975] 1 SCR 1 and** *Director of Industries U.P. & Ors.* **v.** *Deep Chand Aggarwal,* **[1980] 2 SCR 1015, relied on.** A

3. The second ground of hardship relates to excise duty. Under the Karnataka Excise (Excise Duties and Privileges Fee) Rules, 1968 a rebate in excise duty is given in respect of liquor which is either exported outside India or is exported to another State within India. This makes the liquor sold outside the State or exported considerably cheaper since it bears less incidence of excise duty. Under the present scheme, however, all these sales are converted into local sales because the sale must be made to MSIL who, in turn, will either export it to a place within India but outside the State. In both these cases, since the first sale will be within the State to MSIL, a substantial rebate in excise will be lost and the goods manufactured by the appellants will become far more expensive and therefore, will become much less competitive in the outside market. There is a similar provision relating to rebate in sales-tax which also the appellants will lose. There is no doubt that this will cause some hardship to the appellants. The fact, however, remains that any concession which is granted by the State for export sales or inter-state sales is a matter of policy. Granting of such concession or absence of such cannot make the rule itself manifestly arbitrary or unreasonable. If the appellants are aggreived by the existing Rules or would like a similar concession to be extended to sales which are to be made to MSIL in respect of export orders or orders for supply outside the state received by it, it is open to them to make a suitable representation to the State Government. The absence of availability of such a concession, however, cannot make the Rules arbitrary or violative of Article 14. All manufacturers and suppliers within the State of Karnataka are governed by the same Rules and will, therefore, have to pay the same taxes. All persons who are similarly situated are similarly affected by the amended Rules. There is, therefore, no discrimination under Article 14 in its traditional sense. [774-E-H, 776-A-B] B C D E F

Doongaji & Co. (I) **v.** *State of Madhya Pradesh & Ors.,* **[1991] Suppl. 2 SCC 313, relied on.** G

4. How evasion of excise duty is to be checked, however, is a matter of policy. So long as the policy as formulated in the amended Rules is not manifestly arbitrary or wholly unreasonable, it cannot be considered as H

A violative of Article 14. There is, in the present case, no self evidence disproportionality between the object to be achieved and the Rules which have been framed. [775-G]

5. MSIL is now a fully functional authority. It has a large number of depots in various districts of the State and is already handling very
B substantial business. The plea that MSIL is not competent to discharge its obligations and does not have the necessary infrastructure, therefore, merits no further consideration. In any event, some problems with the discharge of its duties by MSIL will not render the amended Rules providing for a distributor licence arbitrary or violative of Article 14. [776-B]

C

6. The State Government is authorised to levy fees for various kinds of permits or licences which may be required for activities connected with the manufacture, supply or sale of liquor. Labelling of liquor bottles with brand labels is an essential activity connected with the sale and distribution of different varieties of liquor manufactured in the State by different
D manufacturers or imported into or exported outside the State. Different varieties of liquor produced by various manufacturers are thus identified for purchase or sale. It is, therefore, permissible for the State Government under the Andhra Pradesh Excise Act, 1968 to levy fees for approval of different varieties of labels to be affixed to liquor bottles for the purpose
E of distribution and sale of liquor. The amendments are within the rule-making power of the State Government. In fact prior to these amendments, a fee of Rs. 100 was being charged for approval of labels. It is nobody's case that the fee was beyond the rule-making power under Section 72 of the Act. [778-C-E]

F 7. The State under its regulatory powers has the right even to prohibit absolutely every form of activity in relation to intoxicants, its manufacture, storage, export, import sale or possession. In all these respects the right to regulate these activities or to carry on these activities vests in the State. When, therefore, such rights are parted with, it is open to the State to part
G with such rights for a consideration. The fee for approval of labels is an aspect of the right to sell or distribute liquor which right the State Government has parted with for consideration in the form of a fee. The increase in the fee from Rs. 100 to Rs. 75000 may appear, at first glance, to be exhorbitant. But it constitutes an extremely small percentage of the total turnover of various products to which these labels are affixed. The fee for
H approval can not, therefore, be considered as exhorbitant or its imposition

wholly arbitrary. It is not the case of the petitioners that their trade in liquor is seriously affected by the levy of this increased fee. The contention of the petitioners that there is no *quid pro quo* between the increased lable fee and the services rendered, also has no merit. It is based on a misconception of the nature of the levy which is for the states parting with the right to distribute or sell liquor. [778-F-H, 779-D]

Har Shankar & Ors. **v.** *The Deputy Excise & Taxation Commissioner & Ors.,* **[1975] 3 SCR 254, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 4708-12 of 1989 Etc. Etc.

From the Judgment and Order dated 13.11.89 of the Karnataka High Court in W.P. No. 16878-16882 of 1989.

G. Ramaswamy, Shanti Bhushan, A.K. Ganguli, Dr. A.M. Singhvi, D.A. Dave, C. Sitaramiah, R.F. Nariman, Ashok Desai, P.P. Rao, S.B. Sanyal, A.S. Nambiar, A. Raghuvir, Nagender Naidu, Nanjun Reddy, J.B. Dadachanji, S.Sukumaran, Ramesh Babu, E.M.S. Anam, C.N. Sree Kumar, A.T.M. Sampath, E.C. Agrawala, P.P. Tripathi, P.N. Ramalingam, Ms. D. Bharathi Reddy, B.G. Sridharan, P. Mahale Shanthukumar, Rajesh Mahale, Rangavittal, M. Veerappa, M.T. George, K. Ram Kumar, C. Balasubramaniam, Ms. Asha Nair, T.V.S.N. Chari) Adv. (NP), P. Mahale for the appearing parties.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. *C.A. Nos. 4708-12, 4718-4727 OF 1989.*

The Karnataka Excise Act, 1965 provides for the levy of duties on the manufacture, transport, purchase and sale, import and export of liquor and intoxicants. In exercise of the rule making power conferred on the State under the Karnataka Excise Act, 1965 various Rules have been framed by the State of Karnataka. We are concerned in these matters with the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, the Karanataka Excise (Brewery) Rules, 1967, the Karanataka Excise (Distillery and Warehouse) Rules, 1967, and the Karanataka Excise (Manufacture of Wine from Grapes) Rules, 1968 as amended on 13-9-1989 by Notifications issued by the State of Karnataka.

A By reason of the amendments carried out in these Rules, a distributor licence is prescribed for the first time under Rule 3(11) of the amended Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. Under Rule 3(11) a distributor licence shall be granted by the Excise Commissioner for the whole of the State or any part thereof to deal in the products of all distilleries, breweries or wineries in the State or to import liquor from B outside the State for the purpose of distribution or sale within the State or any part of it, as may be specified in the licence. The licensee is required to establish not less than one depot in each district within the State or within that part of the State where it proposes to distribute or sell such liquor. What is more important for our purpose, the rule provides that a C distributor licence shall be issued only to such company owned or controlled by the State Government as the State Government may specify. The other rules mentioned above have also been correspondingly amended to provide that the licensees under those Rules shall sell the liquor only to a holder of a distributor licence under the Karnataka Excise (Sale of Indian D and Foreign Liquors) Rules, 1968, subject to certain exceptions specified in each of these Rules. In other words, as a result of these amendments, a licensee either for manufacture or sale of liquor is prohibited from selling liquor to anyone other than the holder of a distributor licence. And the holder of such a licence can only be a company owned or controlled by the State Government, specified under the Karnataka Excise (Sale of E Indian and Foreign Liquors) Rules, 1968. The State Government has specified Mysore Sales International Ltd. (hereinafter referred to as 'MSIL') as a company so specified and has granted it the distributor licence.

F The appellants challenged the validity of these amendments on various grounds. The challenge was repelled by the Karnataka High Court. Hence the present appeals and other matters have come before us. One of the main contentions raised by the appellants was : By compelling the appellants to sell liquor to MSIL and prohibiting them from selling liquor to anyone else, the State Government had violated their fundamental right G under Article 19(1)(g) of the Constitution to carry on trade or business. They further contended that the restrictions placed by these amendments on their right to carry on trade were far from reasonable.

This issue relating to violation of the fundamental rights of the H appellants under Article 19(1)(g) has already been negatived by this Court

in the present case in *Khoday Distilleries Ltd. & Ors.* v. *State of Karnataka & Ors.*, [1995] 1 SCC 574. It has been held (paragraph 60) that the right to carry on any occupation, trade or business does not extend to carrying on trade or business in activities which are inherently pernicious or injurious to health, safety and welfare of the general public. This Court has further held that a citizen has no fundamental right to do trade or business in intoxicating liquor. Hence such trade or business in liquor can be completely prohibited. For the same reason, the Stae can create a monopoly either in itself or in the agency created by it, for the manufacture, possession, sale and distribution of liquor as a beverage and it can also sell licences to citizens for this purpose by charging fees. When the State permits trade or business in potable liquor with or without limitation, the citizen has the right to carry on trade or business only subject to the limitations so placed. After thus deciding the above question, the appeals, special leave petitions and writ petitions were directed to be placed before an appropriate Bench for decision of other questions arising in these matters.

Accordingly, these matters have been placed before us. The appellants contend that the Rules as amended in 1989 are *ultra vires* because they go beyond the scope of the delegated authority given to the State to formulate Rules. The appellants have contended that there is no legislative policy prescribed by the Karnataka Excise Act of 1965 for a distributor licence. Hence the Rules prescribing a distributor licence have travelled beyond the scope of the main Act and are beyond the ambit of the delegated authority.

In order to evaluate this contention, it is necessary to look at the scheme of the Karnataka Excise Act, 1965. The Preamble to the Karnataka Excise Act, 1965 states, "Whereas it is expedient to provide for a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka", the Karnataka Excise Act has been enacted. The Preamble has a clear reference to Entry 8, List II of the Seventh Schedule to the Constitution which empowers the States to legislate in connection with "intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors." Chapter IV of the Act deals with manufacture, possession and sale of intoxicating liquors. Section 13 which forms a part of

A Chapter IV prohibits manufacture, possession or sale of the excisable article in question except under a licence. It provides :

"13(1) : No person shall -

(a) .....

B

(b) .....

(c) .....

(d) construct or work a distillery or brewery; or

C

(e) bottle liquor for sale;

(f) ....., except under the authority and subject to the terms and conditions of a licence granted by the Deputy Commissioner in that behalf or under the provisions of Section 18."

D

Section 15(1) provides that no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf. Both these sections, therefore, provide for issuing a licence for the manufacture, possession, purchase or sale of liquor. In fact such activity is prohibited without a licence. The terms and conditions of the E licence may be such as may be prescribed. Section 17 deals with the power to grant a lease of the right to manufacture etc. Sub-section (1) of Section 17 provides as follows :

"17(1) : The State Government may lease to any person, on such F conditions and for such period as it may think fit, the exclusive or other right -

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

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

G

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

any Indian liquor or intoxicating drug within any specified area."

H Section 71 provides as follows :

"71(1) : The State Government may, by notification and after previous publication, make Rules to carry out the purposes of this Act. A

(2) In particular and without prejuice to the generality of the foregoing provision, the State Government may make Rules - B

(a) .....

(b) omitted

(c) .....

(d) regulating the import, export, transport, manufacture, cultivation, collection, possession, supply or storage of any intoxicant C

(e) regulating the periods and localities in which, and the persons or classes of persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted and regulating the number of such licences which may be granted in any local area : D

(f) .....

(g) ..... E

(h) prescribing the authority by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted, and may, by such Rules, among other matters, -

(i) fix the period for which any licence or permit shall continue in force; F

(ii) to (vi) .....

(i) to (m) .....

(n) any other matter that may be prescribed under this Act. G

Sub-section (3) of Section 71 provides that every rule made under this Act shall have effect as if enacted in this Act subject to such modifications as may be made under sub-section (4). Sub- section (4) requires every rule to be laid as soon as may be before each House of the State Legislature H

A for a total period of 30 days in the manner prescribed there. Section 71, therefore, clearly contemplates Rules being made prescribing different kinds of licences which may regulate the activity of manufacture and sale of intoxicants and the terms and conditions subject to which such licences may be issued. It also contemplates regulation of the number of such B licences. The Act does not specify the kinds of licences which may be issued. This is left to the rule making authority. Thus different kinds of licences are specified under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 deals with licences for the vend of Indian liquor (other than Arrack) or Foreign liquor or both. It deals C with licences of all types. Sub-rule (1) deals with wholesale licences for vend of Indian liquor or Foreign liquor or both. Sub-rule (2) deals with retail of shop licence for vend of Indian liquor or Foreign liquor or both. Sub-rule (4) deals with licences to clubs. Sub-rule (5) deals with occasional licences. Sub-rule (6) deals with special licences. Sub-rule (7) deals with D hotel and boarding house licences and so on. Sub-rule (11) which is introduced by the amendment deals with distributor licences. All kinds of licences, therefore, which regulate the activity of manufacture, distribution and sale of liquor are covered by Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968.

E

Is a distributor licence something different from or alien to the licences contemplated under the Act and prescribed under the above Rule 3? We do not think so. A distributor licence is basically no different from the licences so prescribed. In fact the licences cover the whole gamut of F activities from manufacture to consumption of liquor. Clause (11) of the amended Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 which prescribes a distributor licence refers to it as a licence to deal in the products of all distilleries or breweries or wineries in the State, or a licence to import liquor from outside the State for the purpose of distribution or sale within the State; or to export liquor outside G the State. This is clearly a licence to deal in liquor in the above manner. The licence shall be in Form CL 11 and shall be subject to renewal each year at the discretion of the Excise Commissioner. The Form CL 11 prescribes the conditions of a distributor licence. Conditions 2, 3 and 6 are:

H "(2) The licensee may purchase the liquor only from distill-

eries/breweries/wineries located within Karnataka or import from outside the State. A

(3) The licensee shall sell the liquor only to a person who is holding CL 1 licence in the State or export liquor to a person outside the State, who is holding a valid licence to deal in liquor, B

(6) The licensee shall sell only the approved brands of liquor."

A distributor licence, therefore, is only a licence to deal in liquor by sale and purchase of liquor. This activity is not something different from what is contemplated under the Act itself or in respect of which the rule-making authority has been delegated to the State under Section 71. C The mere fact that a monopoly of distributor licence is sought to be created, does not take the licence outside the ambit of the Act. The Act itself provides that the number of licences can be regulated by the State. If the State chooses to regulate licences by providing that the licence shall be granted only to a company owned by the State, it cannot be said that D such a licence is something which is outside the purview of the Act or the rule-making authority of the State under the Act.

The appellants also contend that the amended Rules are beyond the legislative competence of the State. This argument must be rejected. The Act is clearly within the legislative competence of the State Legislature. E Nobody has challenged it. The amended Rules are within the scope of the delegated authority under Section 71. If the main Act is within the legislative competence of the State Legislature and the Rules have been framed under a validly delegated authority and are within the scope of that authority, we fail to see how the Rules can be challenged on the ground of F lack of legislative competence. If the Act is valid, so are the Rules.

It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test G of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such H

A legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law- making power. In the case of *Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors.* v. *Union of India & Ors.*, [1985] 2 SCR 287 at p. 243 this Court said that a piece of subordinate legislation does not carry the same degree of immunity B which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority C to make such Rules; they are unreasonable and *ultra vires*". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

D

In this connection, we would also like to refer to a decision of this Court in the *State of Madhya Pradesh & Ors.* v. *Nandlal Jaiswal & Ors.*, [1987] 1 SCR 1 at p. 53. This Court has held that though there is no fundamental right in a citizen to carry on trade or business in liquor; and E the State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants such as its manufacture, storage, export, import, sale and possession; nevertheless when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Article 14. The Court, however, observed. "But while considering the applicability of Article 14 in such a case we must bear in mind F that having regard to the nature of the trade or business the Court would be slow to interfere with the policy laid down by the the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of G regulating manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done unless it appears to be plainly arbitrary, irrational or *mala fide.*"

H

In the present case, therefore, we must examine whether there is any manifest arbitrariness in prescribing a distributor licence which can be granted only to a company owned by the State: and in compelling the appellants to sell their product to the distributor. The appellants have pointed out that the amendments must be considered as arbitrary because they cause undue hardship to all those who are concerned with the manufacture and sale of liquor. They point out that although the manufacturers are obliged to sell their commodity to the MSIL, there is no corresponding obligation cast on the MSIL to buy the liquor manufactured by the manufacturers in the State of Karnataka. In the absence of such an obligation on the MSIL to buy the liquor, it can well happen that MSIL may act arbitrarily or capriciously and may purchase or not purchase liquor from the manufacturers at its own sweetwill. This would seriously affect the business of all those engaged in the manufacture and sale of liquor. This apprehension does not appear to be justified. In the Statement of Objections on behalf of the State Excise Commissioner which were filed before the High Court of Karnataka, the respondents have explained in paragraph 16 that it is not correct to state that the Government company is at liberty to purchase or not to purchase the liquor produced by the petitioners. It is bound to purchase the liquor if there is demand from the wholesellers. Even otherwise it has been submitted that proper guidelines will be issued to the Government company in this behalf. The Government company is expected to act *bona fide* and with responsibility and it is not correct to contend that the Government agency will be interested only in a particular manufacturer. This submission has considerable force. What is more important, during the period that these appeals were pending before us, MSIL has not merely established several depots but has carried on distribution of liquor in the State of Karnataka on a large scale. Learned counsel appearing for the respondents have stated before us that MSIL receives orders for supply from various purchasers. These orders specify the brand of liquor and the company from which the supplies are required. Accordingly MSIL places orders with the concerned companies for the brands of liquor which are demanded by their purchasers. It is on the basis of these demand requisitions received by MSIL that MSIL places orders. There is, therefore, no question of any hardship being caused to the appellants by reason of the fact that their sales have to be channelled through an intermediary. Depending upon the orders received by the MSIL, it in turn, places orders with the suppliers or manufacturers con-

A B C D E F G H

A cerned. The business activity of the appellants cannot, therefore, be said to be curtailed in any manner. Nor can there be any hardship on the appellants. Once the Rules oblige the manufacturers to supply their product only to the company holding the distributor licence, a correspoding duty is cast on the distributor to place orders with the suppliers concerned whenever demand for a particular product is received by it.
B

Looking to the channelizing role of MSIL, the fear of discrimination between different suppliers expressed by the appellants does not appear to be justified. In the case of *Maganlal Chhagganlal (Pvt.) Ltd.* v. *Municipal Corporation of Greater Bombay & Ors.*, [1975] 1 SCR 1 at 23 this Court has
C observed that it is not a every fancied possibility of discrimination but the real risk of discrimination that we must take into account. The same view was reiterated in *Director of Industries, U.P. & Ors.* v. *Deep Chand Aggarwal,* [1980] 2 SCR 1015 at 1021-22. Also, if there is discrimination in actual practice, this Court is not powerless.

D

The second ground of hardship which is pointed out relates to excise duty. Under the Karnataka Excise (Excise Duties and Privileges Fee) Rules, 1968 a rebate in excise duty is given in respect of liquor which is either exported outside India or is exported to another State within India. This makes the liquor sold outside the State or exported considerably
E cheaper since it bears less incidence of excise duty. Under the present scheme, however, all these sales are converted into local sales because the sale must be made to MSIL who, in turn, will either export it, if it has received an export order, or will export it to a place within India but outside the State. In both these cases, since the first sale will be within the
F State to MSIL, a substantial rebate in excise will be lost and the goods manufactured by the appellants will become far more expensive and, therefore, will become much less competitive in the outside market. There is a similar provision relating to rebate in sales- tax which also the appellants will lose. There is no doubt that this will cause some hardship to the appellants. The fact, however, remains that any concession which is granted
G by the State for export sales or inter-state sales is a matter of policy. Granting of such concession or absence of such concession cannot make the rule itself manifestly arbitrary or unresonable. If the appellants are aggrieved by the existing Rules or would like a similar concession to be extended to sales which are to be made to MSIL in respect of export orders
H or orders for supply outside the State received by it, it is open to them to

make a suitable representation to the State Government. The absence of availability of such a concession, however, cannot make the Rules arbitrary or violative of Article 14. All manufacturers and suppliers within the State of Karnataka are governed by the same Rules and will, therefore, have to pay the same taxes. All persons who are similarly situated are similarly affected by the amended Rules. There is, therefore, no discrimination under Article 14 in its traditional sense.

The appellants have placed reliance upon the observations of this Court in *Doongaji & Co. (I)* v. *State of Madhya Pradesh & Ors.,* [1991] Suppl. 2 SCC 313 at p. 220) to the effect that there is no fundamental right in a citizen to carry on trade or business in liquor. However, when the State has decided to part with such right or privilege to others, then the State can regulate the business consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure is arbitrary as violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of liquor through any agency other than the State would be subject to the rigours of Article 14. We respectfully agree with these observation. In the present case, however, there is no violation of Article 14.

It was also submitted before us that the Rules must be considered manifestly arbitrary because the avowed purpose of formulating the amended Rules is to stop evasion of excise. In the counter statement filed by the Government of Karnataka before the High Court of Karnataka it has set out the object of the amendment. The affidavit states. "The impugned Rules have been made with the sole object of preventing leakage of excise revenue and, therefore, they are reasonable restrictions within the meaning of Article 19(6)." It is submitted before us that such evasion could have been checked by other means which would have been more beneficial to or less hard on the appellants. How such evasion is to be checked, however, is a matter of policy. So long as the policy is formulated in the amended Rules is not manifestly arbitrary or wholly unreasonable, it cannot be considered as violative of Article 14. There is, in the present case, no self evident disproportionality between the object to be achieved and the Rules which have been framed.

It was lastly submitted that MSIL ought not to have been nominated for a distributor licence because it is not competent to discharge its

A obligations and does not have the necessary infrastructure. This plea was raised before the Karnataka High Court at a time when MSIL had not started functioning. It is now a fully functional authority. MSIL has stated that it has a large number of depots in various districts of the State and is already handling very substantial business. This plea, therefore, merits no
B further consideration. In any event, some problems with the discharge of its duties by MSIL will not render the amended Rules providing for a distributor licence arbitrary or violative of Article 14.

In the premises, these appeals have no merit and they are dismissed with costs. Under the interim orders, the appellants are liable to pay
C compensation to MSIL if they lose in the appeals. This is in view of the commission which is prescribed under the Rules which is to be paid to MSIL. The appellants were also directed to keep separate accounts of their dealings and supply a copy of the same, *inter alia*, to MSIL. Some of the appellants have accordingly supplied statements of account to MSIL. Those who have not supplied such statements are directed to supply the
D same to MSIL within eight weeks from today. The appellants are directed to pay to MSIL the requisite commission amount on the basis of the dealings conducted by them within twelve weeks from today.

W.P. Nos. 666, 667, 693, 694, 707 & 910 of 1990

E

For the same reasons, the writ petitions are also dismissed with the above directions.

S.L.P. (C) Nos. 13817-13828/1993

F These petitions are for leave to appeal from a judgment of the Andhra Pradesh High Court upholding the validity of the amendments made to sub-rule (2) of Rule 4 and sub-rule (2) of Rule 11 of the Andhra Pradesh (Foreign Liquor and Indian Liquor) Rules, 1970 as also sub-rule (12) of Rule 66 of the Andhra Pradesh Distillery Rules, 1970 and Rule
G 34(2) of the Andhra Pradesh Brewery Rules 1970. These rules have been framed under the Andhra Pradesh Excise Act of 1968 in exercise of powers conferred by Section 72 of the Andhra Pradesh Excise Act of 1968. They were amended by G.O.M.S. No. 187 Revenue (Excise III(2) dated 18.3.1991. These amendments were challenged before the Andhra Pradesh High Court on the ground that they violated the petitioners' rights under
H Articles 14 and 19(1)(g) of the Constitution of India. These challenges have

been negatived by the Andhra Pradesh High Court except for the retrospective operation of the amended Rules. The present petitions are for leave to appeal from this judgment and order of the Andhra Pradesh High Court. As a result of these amendments, the fee for the approval of any one variety of labels to be affixed on bottles of liquor is either enhanced from Rs. 100 to Rs. 25000 or fee of Rs. 25000 for approval of lables is introduced for the first time. The approval has to be obtained every year. These amendments were challenged as violative of Articles 14 and 19(1)(g) of the Constitution.

As common questions of law arise, these petitions have been heard along with the petitions and appeals challenging amendments to various Rules under the Karnataka Excise Act. On the question of violation of Article 19(1)(g) of the Constitution this Court has already held in these very matters (*Khoday Distilleries Ltd. & Ors.* v. *State of Karnataka & Ors.*), (supra) that the amended Rules do not violate Article 19(1)(g) of the Constitution. The only challenge, therefore, which survives is the challenge under Article 14. The petitioners contend that the approval fee for labels has been suddenly enhanced from Rs. 100 to Rs. 25000 by virtue of the amendments. In some cases such a fee has been introduced for the first time. These amendments are highly arbitrary and, therefore, violate Article 14 of the Constitution. It is also contended that the Andhra Pradesh Excise Act, 1968 does not contemplate any fee of this kind.

Now, Section 21(3) of the Andhra Pradesh Excise Act provides that different rates may be specified for different kinds of excisable articles and different modes of levying duties under Section 22 may be prescribed. Section 22 prescribes different modes of levying excise duty and countervailing duty under Section 21. Sub-clause (d) of Section 22 provides for imposition of fees or requirement of licences for manufacture, supply or sale of any excisable article. Section 72 deals with the power to make rules. Under Section 72(2)(g) and Section 72(h)(ii) it is provided as follows :-

> "72(2) : In particular and without prejudice to the generality of the foregoing provision, the Government may make rules -
>
> (g) regulating the time, place and manner of payment of any duty or fee and the taking of security for the due payment of any duty or fee;

A (h) : prescribing the authority by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted or issued and may, by rules, among other matters–

B (ii) : prescribe the scale of fees, or the manner of fixing the fees payable in respect of any lease, licence or permit, or the storing of any excisable article."

Thus the State Government is authorised to levy fees for various kinds of permits or licences which may be required for activities connected with the C manufacture, supply or sale of liquor, Labelling of liquor bottles with brand labels is an essential activity connected with the sale and distribution of different varieties of liquor manufactured in the State by different manufacturers or imported into or exported outside the State. Different varieties of liquor produced by various manufacturers are thus identified for pur- D chase or sale. It is, therefore, permissible for the State Government under the Andhra Pradesh Excise Act, 1968 to levy fees for approval of different varieties of labels to be affixed to liquor bottles for the purpose of distribution and sale of liquor. The amendments are within the rule-making power of the State Government. In fact prior to these amendments, a fee of Rs. 100 was being charged for approval of labels. It is nobody's case that the E fee was beyond the rule-making power under Section 72 of the Act.

It is also contended that the fee of Rs. 25000 for the approval of any one variety of labels is exhorbitant and totally disproportionate to the work involved. Therefore, such levy violates Article 14. But, in this connection, F it is necessary to bear in mind that the State under its regulatory powers has the right even to prohibit absolutely every form of activity in relation to intoxicants, its manufactures, storage, export, import sale or possession. In all these respects the right to regulate these activities or to carry on these activities vests in the State. When, therefore, such rights are parted with, it is open to the State to part with such rights for a consideration. The fee G for approval of labels is an aspect of the right to sell or distribute liquor which right the State Government has parted with for consideration in the form of a fee. The increase in the fee from Rs. 100 to Rs. 25000 may appear, at first glance, to be exhorbitant. But it constitutes an extremely small percentage of the total turn-over of various products to which these H labels are affixed. The fee for approval can not, therefore, be considered

as exhorbitant or its imposition wholly arbitrary. It is not the case of the petitioners that their trade in liquor is seriously affected by the levy of this increased fee. In the case of *Har Shanker & Ors. v. The Deputy Excise & Taxation Commissioner & Ors.*, [1975] 3 SCR 254 at 278 this Court upheld the right of the State to prohibit absolutely all forms of activities in relation to intoxicants. It said that the wider right to prohibit absolutely would include the narrower right to permit dealing in intoxicants on such terms of general application as the State deems expedient. The Court said that the Government has the power to charge a price for parting with its rights. It also further observed that the licence fee which the State Government charged to the licensee through the medium of auctions or the fixed fee which was charged to the vendors of foreign liquor holding licences need bear no *quid pro quo* to the services rendered to the licences. The word 'fee' in this context is not used in the technical sense of the expression. By 'licence fee' or 'fixed fee' is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incidence of a trading or business transaction. The contention, therefore, of the petitioners that there is no *quid pro quo* between the increased label fee and the services rendered also has no merit. It is based upon a misconception of the nature of the levy.

A B C D E

In the premises, we agree with the reasoning and conclusion arrived at by the Andhra Pradesh High Court. These special leave petitons are, therefore, dismissed with costs.

V.S.S. Matters dismissed.