

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF APRIL, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 541 OF 2026 (EXCISE)

BETWEEN:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF FINANCE AND EXCISE
VIKASA SOUDHA
BENGALURU - 560 001
2. THE COMMISSIONER OF
EXCISE IN KARNATAKA
TTMC, 2ND FLOOR
BMTc COMPLEX
SHANTHINAGAR
BENGALURU - 560 027

...APPELLANTS

(BY SRI SHASHI KIRAN SHETTY K., ADVOCATE GENERAL A/W
SMT. PRATHIMA HONNAPURA, AAG,
SMT. NAMITHA MAHESH B.G., AGA &
MS. ADOORYA HARISH, ADVOCATE)

AND:

1. SRI GURUSWAMY
S/O LATE SANNEGOWDA
AGED ABOUT 73 YEARS
CL-9 LICENSEE



SHILPA BAR AND RESTAURANT
KATHA NO. 694, YERAGANAHALLI
MYSORE - 570 001

2. SRI B. GOVINDARAJ HEGDE
S/O LATE B. SANJEEVA HEGDE
AGED ABOUT 64 YEARS
CL-9 LICENSEE
SANJEEVA BAR AND RESTAURANT
VARAMPALLI, UPPINAKOTE
BRAMHAVARA TALUK
UDUPI DISTRICT - 576 213
3. SRI H.M. NASIR HUSSAIN
S/O LATE H. MIRJA HUSSAIN
AGED ABOUT 53 YEARS
CL-9, LICENSEE
NO.101, BRIGADE SERENITY
KALYAN NAGAR
CHIKKAMAGALUR - 577 102
4. SRI C.M. GOWDA
S/O LATE MUDLAIAH
CL-9 LICENSEE
AGED ABOUT 69 YEARS
NO. 22, "CHINNADAGIRI"
1ST BLOCK, II STAGE
BEHIND VIKASA SCHOOL ROAD
VINOBANAGAR, SHIVAMOGGA - 577 201
5. SMT. VISHRUTHA SHETTY
W/O JAGAJJEEVAN SHETTY
AGED ABOUT 38 YEARS
CL-9 LICENSEE
PRINCE BAR AND RESTAURANT
DOOR NO. 3-25B

HOSURU VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT - 571 213

...RESPONDENTS

(BY SRI D.R. RAVISHANKAR, SENIOR ADVOCATE A/W
SRI MOHAN MAHABALESHWARA BHAT, ADVOCATE)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE INTERIM ORDER DATED 25.11.2025 PASSED IN W.P. No. 35227/2025 (EXCISE) PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT & ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

INTRODUCTION

1. The State has filed the present appeal impugning an ad interim order [**impugned order**] dated 25.11.2025 passed by the learned Single Judge of this Court in WP.No.35227/2025 (EXCISE). The said writ petition was filed, *inter alia*, impugning the

amendments introduced to Rule 5, Rule 5-A and Rule 12 of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 (hereafter '**the Rules**') by the Karnataka Excise (Sale of Indian and Foreign Liquors) (Second Amendment) Rules, 2025 [**the impugned rules**]. By the impugned order, the learned Single Judge has stayed the operation, implementation and enforcement of the amended Rules 5 and 5-A of the rules. Although the impugned order is an *ad interim* order, confined to the next date of hearing scheduled for 12.12.2025, it has since been extended.

2. The respondents herein (writ petitioners) were holders of CL-9 licences issued under Rule 3(9) of the Rules. Respondent No. 1 holds a CL-9 licence at Mysore. Respondent No.2 holds a CL-9 licence for Udupi District. Respondent No.3 is the legal heir of the deceased CL-9 licensee, whose licence at Chikkamagalur held during the year 1991 to 1992, stood discontinued from the excise year 1992-93. Respondent No.4 held a CL-9 licence at Shivamogga, which stood discontinued from the excise year 2001-02. Respondent No.5 held a CL-9 licence at Kundapura Taluk, Udupi District, which was not renewed from the excise year 2023-24. Respondents Nos.3 to 5 had submitted representations seeking

renewal of their discontinued licences, which were rejected by the concerned Deputy Commissioner of Excise.

3. The respondents (writ petitioners) had sought a declaration that the impugned Rules, which were published in the Gazette on 03.11.2025, are illegal, unreasonable, arbitrary, unconstitutional and ultra vires (erroneously referred to as intra vires in the prayer clause) of the Karnataka Excise Act, 1965 [**the Excise Act**] and the Rules framed thereunder.

THE AMENDMENTS

4. Before proceeding further, it is relevant to note that the Government issued three separate notifications on 03.11.2025, introducing amendments to various rules framed under the Excise Act - Notification No.I, the Karnataka Excise (General Conditions and Licences) (Second Amendment) Rules, 2025, amended the Karnataka Excise (General Conditions of Licences) Rules, 1967 by amending the proviso to Rule 5(4) of the said Rules. The words 'or Form CL-9' were substituted by the words 'or Form CL-9 or Form CL-9A'. Thus, introducing a reference to a licence in Form CL-9A in the proviso. Rule 17A of the Rules was substituted to provide for transfer in the event of the death of the licensee or the lessee.

5. By virtue of Notification No.II, the Karnataka Excise (Lease of the Right of Retail Vend of Beer) (Second Amendment) Rules, 2025 were notified. By virtue of these rules, Rule 5 of the Karnataka Excise (Lease of the Right of Retail Vend of Beer) Rules, 1976 was amended to introduce reference to Form CL-9A in addition to Form CL-9, much in conformity with the amendments introduced in Rule 5 of the Karnataka Excise (General Conditions of Licences) Rules, 1967.

6. By Notification No.III published on 03.11.2025, the impugned Rules were notified. By virtue of Rule 2 of the impugned Rules, clauses (a-1), (a-2) and (a-3) were introduced to Rule 2(i) of the Rules. These clauses define the terms 'Auction pool', 'Bid Amount' and 'e-auction'. Further, clause (f-1) was introduced in Rule 2(ii) for defining the term 'winning bid'. As is apparent, these definitions were intended to explain the terms used in the Rules for the auction of the licences. Rule 3 of the Rules was amended to introduce Sub-rule (2-A) and (9-A). Rule 5 of the Rules was amended by the insertion of a further proviso, and Rule 5A of the Rules was amended by substituting the proviso to sub-rule (3) of Rule 5A. Rule 12 of the Rules was also amended by the introduction of a proviso to exclude the applicability to certain licences.

7. Rule 3 of the Rules sets out various licences. The relevant extract of Rule 3 as amended by virtue of the impugned Rules is set out below:

"R.3 - Licences.

(1) xxxxxxxxxxxx

(1-A) xxxxxxxxxxxx

(2) Retail off shop licences for vend of India liquor or Foreign or both not to be drunk on the premises.-

Under these licences granted in Form C.L.2, the sale of liquor in sealed bottles to any person in a quantity less than 0.180 liters at a time is prohibited.

(2-A) Retail off shop licences for vend of Indian liquor or Foreign liquor or both not to be drunk on the premises. - Notwithstanding anything contained in Rule 12, these licences shall be granted in Form CL-2A for the sale of Indian or Foreign Liquor or both in sealed bottles to successful bidders, where bidding process shall be carried through "e-auction". The discontinued CL-2 licences, CL-2 licences which are yet to be granted as per 1987 quota (vide Government order No. HD 452 EFL 86, dated 30.06.1987), the discontinued CL-11 (C) licences, CL-11 (C) licences which are given prior approval by the Excise Commissioner but not yet opened and CL-11(C) licences which are yet to be granted as per allotment to the Mysore Sales International Limited (M.S.I.L) as per the Government Order No. FD 7 EFL 2008, dated 03.07.2009 and Government Order No. FD 15 EFL 2015, dated 23.09.2016 respectively, shall be granted in Form CL-2A to successful bidders, where bidding process shall be carried through "e-auction".

(3) xxxxxxxxxxxx

(4) Licence to clubs. - The Agent, Secretary or Manager or any other person entrusted with the management of the business of the club shall apply and obtain licence in Form CL-4 from the Deputy Commissioner. The licensee under this clause may open up to four additional counters for serving liquor for the convenience of the members

within the licenced premises with the approval of the Deputy Commissioner.

Explanation. - For the purpose of this clause, club means and includes organisation, run by society, a trust registered under relevant Law or a Company registered under Section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013 or other association of individuals, whether incorporated or not with the object of service motive, providing recreation, cultural, sports, gymnasium and service activities of entertainment:

Provided that no such licence under this clause shall be granted by the Deputy Commissioner, unless the following conditions are satisfied.-

- (1) the club shall have been registered under the Karnataka Societies Registration Act, 1960 or Indian Trust Act, 1882 or under Section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013 for a period of [not less than three years, subject to production of audited reports for the preceding three years) and with not less than 100 permanent members;
- (2) It shall have its own land and building or shall have obtained it on lease for a term of eleven years or more:
- (3) It shall have facility for outdoor games like Tennis, Badminton, Volley ball etc., and indoor games like Carrom, Table Tennis etc., and a reading room or a library;
- (4) adequate facilities for catering food and drinks to It shall have adequate the members; and
- (5) It shall have separate toilet with running water facilities for men and women:

Provided further that, existing clubs to whom licences are granted under this clause for the excise year 2001-2002 shall be allowed to renew their licences under the rule existing prior to the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquors) (First Amendment) Rules, 2002:

Provided also that existing clubs to whom licences have already been granted but are registered under

Section 25 of the Companies Act, 1956 or under Section 8 of the Companies Act, 2013 shall also be allowed to renew their licences.

(5) Occasional Licences. –

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(6) Special Licences.-

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(6-A) Star Hotel Licences.-

**

(7) Hotel and Boarding House licences.-

**

(7-A) Tourist Hotel Licences.-

**

(7-B) Tourist Hotel Beer Bar Licences.-

**

(7-C) Licence to supply liquor on Board of Train engaged and run by Tourism Development Corporation of State Government or Central Government.-

**

(7-D) Hotel and Boarding House Licences owned by the person belonging to Scheduled Castes and Scheduled Tribes.-

**

(8) Military Canteen Licences.-

**

(8-A) Military Canteen Stores Bonded Warehouse Licence.-

**

(8-B) Border Security Force or Para Military Forces Licences.-

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(9) Refreshment Room (Bar) Licence. -

(a) A licence under this clause, for refreshment room (bar) for sale of Indian liquor combined with the supply of meals or eatables shall be applied and obtained in Form CL-9 from the Deputy Commissioner:

Provided that no such licence shall be granted by the Deputy Commissioner unless he is satisfied that the refreshment room (bar) provided the following accommodations and facilities.-

(i) a kitchen with sufficient accommodation either with exhaust fan or proper ventilator. The customers shall not

pass through kitchen to go the toilet. Passage to the toilet shall be separate from the kitchen;

(ii) a separate room (Dining Hall) for serving the liquor along with meals or eatables for consumption. The space in the dining shall be so provided that not more than eight persons shall be accommodated in a built in floor area of 100 Sq. ft. (10x10) with a minimum of four feet space between the tables for the movement of customers and servers. Further, the total area of the Hall/Halls for dining shall not be less than 400 Sq. ft:

Provided that the minimum requirement of 400 Sq. ft. area for dining may be relaxed by the Deputy Commissioner of Excise in case of the licences existing on the dates of the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1993:

Provided further that in case the licensee desired to shift the licenced premises to any other premises from the premises in which the licence is existing on the date of the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1993, the above provisions shall apply without any relaxation.]

(iii) adequate seating arrangements;

(iv) separate toilet with running water facilities for men and women.

(10) Auctioner's licences.-

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(11) Distributor licence.-

**

(11-A) Distributor licence to sell foreign liquor.-

**

(11-B) Licence to sell confiscated liquor.-

**

(11-C) Retail shop licence issued to Government Companies.-

**

(12) Licence for retail sale of bottled toddy.-

**

(13) Arrack depot licence.-

**

(14) **Licence for running duty-free shop at International Airport.-**

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(15) **Refreshment Room (Bar) Licence at International Airport.-**

** "

8. Rule 5, 5A and 12 of the Rules as amended by the impugned Rules, are set out below:

" [5. Grant of Licence. - On receipt of the application under Rule 4, [and subject to the provisions specified in Rule 4-A) the Deputy Commissioner or the Excise Commissioner, as the case may be, may require such other particulars as he may deem necessary and may make inquiries for verification of the particulars furnished by the applicant and also such other inquiries as he deems fit. If the Deputy Commissioner or the Excise Commissioner, as the case may be is satisfied that there is no objection to grant the licence applied for, he may grant the licence on payment of the fee prescribed under Rule 8 for such licence:

Provided that no such licence shall be granted by the Deputy Commissioner except with the previous sanction of the Excise Commissioner.]

⁴[Provided further that while considering the applications for grant of CL-7 licence, the Deputy Commissioner shall ensure that the applicant is in a position to provide good accommodation and facilities to the customers and the standard of refreshments, food and service are provided for. If the Deputy Commissioner is of the opinion that the hotel or the boarding house does not conform to the minimum standard required for running a hotel or boarding house or not suitable to grant licence, he may reject such application after giving reasons therefor.]

"Provided also that, the Deputy Commissioner may grant CL-2A, CL-9A Licences to successful bidder in e-auction with the previous approval of the Excise Commissioner, following the reservation norms fixed for this purpose by the Government and subject to the conditions

specified in e-auction notification issued from time to time¹"

5-A. Renewal of licence.-(1) The Excise Commissioner or the [Deputy Commissioner of Excise], as the case may be, may on an application made to him along with the licence fee prescribed in Rule 8 renew the licence granted under these rules[except wholesale licence granted in Form CL-1 or Form CL-1 (Beer), for the period commencing from 1st July, 2006.]

(2) Every such application shall be made at least one month before the expiry of the licence already granted:

Provided that the Excise Commissioner or the [Deputy Commissioner of Excise], as the case may be, may accept and consider any such application made after the aforesaid period of one month, if he is satisfied that the applicant had sufficient cause for not making the application within that period.

(3) The licences granted prior to the first of July, 1999 may be renewed at the discretion of the Excise Commissioner or the [Deputy Commissioner of Excise], as the case may be on payment of 50% (fifty per cent) of the fee prescribed under Rule 8 in respect of the entire period for which licence was not granted, for the purpose of maintaining continuity of the licences:

"Provided that, nothing in sub-rule 5-A (3) shall be applicable to CL-2, CL-9 and CL-11(C) Licences.

Provided also that,

(a) the CL-2, CL-9, CL-11(C) licences which have not been renewed as on the date of final publication of the Karnataka Excise (Sale of Indian and Foreign Liquors) (Second Amendment) Rules, 2025 shall be deemed to have lapsed and forfeited. Such licences shall not be eligible for renewal and no rights shall accrue to the licensee in respect thereof, and these licences shall fall into the auction pool for auctioning:

¹ Inserted by virtue of Karnataka Excise (Sale of Indian and Foreign Liquors) (Second Amendment) Rules, 2025

(b) CL-2, CL-9, CL-11(C), CL-2A and CL-9A licences which are not renewed within a period of six months from the commencement of Excise year, or, within a period of six months from the date of death of the licensee, are considered as lapsed and forfeited. Such licences shall not be eligible for renewal, and no rights shall accrue to the licensee in respect thereof, such licences shall fall into the auction pool for auctioning;

(ii) Sub-rule 4 shall be omitted."²

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12. Number of licences to be fixed. - (1) The maximum number of licences to be granted in an area shall be determined from time to time by the Excise Commissioner with the previous approval of the State Government.

(2) The number of retailers licences to be granted in a taluk for the year shall be determined with reference to the population of such taluk and the probable demand.

(3) The number of retail licences to be granted in a Taluk shall be as follows. -

One retail licence for every 7,500 urban population or a fraction thereof exceeding 3,500; and

One retail licence for every 15,000 rural population or a fraction thereof exceeding 7,500.

Explanation. - "Population" for the purpose of this sub-rule shall be the population as ascertained at the last preceding census and includes the projected annual growth subsequent to the last preceding census.

[Provided that, nothing in rule 12 shall be applicable to CL-2A Licences.]³

² Substituted by virtue Karnataka Excise (Sale of Indian and Foreign Liquors) (Second Amendment) Rules, 2025. The deleted proviso read as follows "Provided that while renewing the licence under the sub-rule the Deputy Commissioner of Excise or the Excise Commissioner, as the case may be shall ensure that the total number of licences granted or renewed do not exceed the quota fixed in Rule 12, for grant of each kind of licence for an area.

³ Inserted by virtue Karnataka Excise (Sale of Indian and Foreign Liquors) (Second Amendment) Rules, 2025

[(3-a) x x x x x.]

[(4) x x x x x.]

GROUNDS OF CHALLENGE

9. A plain reading of the petition indicates that the impugned

Rules are challenged on several grounds, including

(a) that the said amendments could not have been introduced without proper statistics as to the licences that had been renewed and the quota fixed for such licences;

(b) that the licences referred to as CL-2A licences cannot be exempted from the rigours of Rule 12 of the Rules, as they are at par with licences referred to as CL-2 licences;

(c) that the amended Rule 5A of the Rules takes away the licence holder's vested right of renewal, and forfeiting a vested right violates the Constitution of India;

(d) No reservation can be provided in the matter of granting licences, and therefore, the amendment enabling the licences to be granted to reserved categories is unconstitutional; and

(e) the amendments suffer from excessive delegation and therefore are liable to be set aside.

10. The respondents (writ petitioners) are aggrieved by the proviso to Rule 5 of the Rules, which provides for the grant of licences by e-auction and in accordance with the reservation fixed by the State Government. The petitioners challenge Rule 5-A(3) of the Rules, which effectively excludes the licences as CL-2, CL-9

and CL-11(C) licences from the scope of Rule 5-A(3) of the Rules. Thus, licences which were granted prior to 01.07.1999 cannot be renewed. Further, CL-2, CL-9 and CL-11(C) licences that have not been renewed as on the date of the publication of the impugned Rules, i.e., 03.11.2025 were deemed to have lapsed and forfeited. Such licences would not be eligible for renewal. The amended proviso to Rule 5-A(3) also provides that the licences which had not been renewed within a period of six (06) months from the commencement of the excise year or within a period of six (06) months from the date of death of the licensee shall be considered as lapsed and forfeited.

11. The respondents (writ petitioners) also challenge the proviso to Rule 12 of the Rules, which excludes the applicability of the said Rule to CL-2A licences. In the present case, the petitioners have neither renewed their licences within a period of 6 months from the commencement of the excise year, nor renewed within the 6 months from the date of death of the licensee. Therefore, their licences are considered as lapsed or forfeited.

IMPUGNED ORDER

12. As is apparent from the above, the import of the amendments to the Rules introduced by the impugned Rules is the non-renewal

of lapsed licences and the issuance of licences through an open auction.

13. The learned Single Judge had noted the submission advanced on behalf of the petitioners that Rule 5 imposes fresh restrictions, which were not contemplated under the Excise Act and that similar reservation-based restrictions were examined by the Division Bench of this Court in **State of Karnataka and Others v. B. Govindraj Hegde and Others: WA 3374/2016 and connected matter**. The learned Single Judge further noted the submission that the amended Rule 5-A, by deeming licences as lapsed and forfeited, extinguished vested rights of renewal. After having noted the said two submissions, the learned Single Judge observed as under :

"It is further submitted that, apart from the above, the amended Rule 5A by deeming licences as lapsed and forfeited, extinguished vested rights of renewal, which were otherwise preserved under the unamended Rule.

Having regard to the submissions made, prima facie this Court finds that amended proviso to Rule 5 and Rule 5A introduce fresh conditions -reservation - based eligibility criteria and automatic forfeiture that appear to travel beyond the scope of enabling provisions of the Karnataka Excise Act, 1965.

The matter requires consideration, and therefore operation, implementation and enforcement of the amended Rule 5 and Rule 5A of Rules, 2025 are stayed insofar as the petitioners' are concerned, till the next date of hearing."

14. The impugned order stayed the enforcement of the amended Rule 5 and Rule 5A of the Excise Rules, essentially on the basis of (i) the observations made by the Division Bench in **B. Govindraj Hegde** (*supra*); and (ii) on a *prima facie* finding that the amended proviso to Rule 5 and Rule 5A of the Excise Rules introduces fresh conditions regarding eligibility criteria (reservation) and automatic forfeiture, which travel beyond the enabling provisions of the Excise Act.

15. In view of the above, the principal question required to be considered is whether the decision in the case of **B. Govindraj Hegde** (*supra*) supports the view that following the reservation norms in the grant of licence, or declining the renewal of licence, and whether the Rules are *ultra vires* to the Constitution of India or the Excise Act. Since the impugned order is not premised on the challenge to the proviso to Rule 12, we do not consider it necessary to address the said question in these proceedings.

SUBMISSIONS

16. Mr Ashok Harnahalli, learned Senior Counsel appearing for the respondents, had advanced submissions on several fronts.

16.1 First, he submitted that the impugned Rules suffer from excessive delegation. He submitted that the rule-making power did not empower the State Government to further delegate the power to specify the reservation. Thus, the proviso to Rule 5 of the Rules as introduced by the impugned Rules is liable to be set aside as it exceeded the Rule-making powers. It is submitted that the Excise Act does not provide for any sub-delegation of further powers. He referred to the decision of the Supreme Court in **Marathwada University v. Seshrao Balwant Rao Chavan**⁴, in support of the said contention.

16.2 Second, he submitted that the impugned Rules had the effect of taking away vested rights, which were not permissible.

16.3 Third, he submitted that the impugned Rules were discriminatory. He submitted that the Rules effectively apply only to three licences: CL-2A, CL-9A and CL-11(C). He submitted that licences granted under Rule 3(2-A) and Rule 3(9-A) of the Rules were similar to the licences granted under Rule 3(2) and Rule 3(9) of the Rules. He submitted that although the provisions concerning the functioning of the licence were similar and it was expressly provided that working conditions of licences CL-2 and CL-9 would

⁴ (1989) 3 SCC 132

apply to CL-2A and CL-9A licences respectively, the term for which the licences were granted differed. Further, the same were not subject to certain restrictions. He submitted that this would offend the equal protection clause of the Constitution of India.

16.4 He also submitted that the amendments were confined to only three licences and thus constituted an inherent discrimination against other categories of licences. He contended that Rule 5 of the Rules was not applicable to CL-2A and CL-9A licences, and the amendment to the proviso to Rule 5A was only applicable to CL2, CL9 and CL-11(C) licences. He contended that singling out these licences vis-à-vis other licences is arbitrary. He also referred to the decisions of the Supreme Court in the **State of Kerala v. Unni and another**⁵ and **State of M.P. and others v. Nandlal Jaiswal and others**⁶, in support of his contention that once the State issues licences, it cannot discriminate between the licences.

16.5 He also submitted that the writ petitioners had applied for renewal prior to the notification of the impugned rules and thus had acquired a vested right for the applications to be considered on the basis of the Rules as in force at the time of the application.

⁵ (2007) 2 SCC 365

⁶ (1986) 4 SCC 566

16.6 Lastly, he mentioned that excluding CL-2A licences from the scope of Rule 12 was also arbitrary.

REASONS AND CONCLUSION

Re: State of Karnataka and Others v. B. Govindraj Hegde and Others

17. As noted above, the impugned order is largely premised on the decision of the Division Bench of this court in **State of Karnataka and Others v. B. Govindraj Hegde and Others** (supra). However, prima facie, this decision does not support the case set up by the petitioners. In the said case, the Court had examined a challenge to relaxing of the conditions for reserved categories as provided under sub-rule (7) of Rule 3 of the Rules. Sub-rule (7) provided for the issuance of hotel and boarding house licences and prescribed the condition that such licences would not be issued unless the hotel and boarding house had a minimum of 30 double rooms in a corporation area or 20 double rooms in other areas. The Government sought to introduce Sub-rule (7D), reducing the requirement to a minimum of 15 double rooms in corporation areas and 10 in other areas for the reserved category.

18. In this regard, the Division Bench of this Court held as under:

"32. As such, as per the above referred decision of the Apex Court in the case of Khoday Distilleries Industries

(supra) when the restriction has been provided in interest of the general public by virtue of Article 19(6) of the Constitution upon the rights of the citizen under Article 19(1) (g) of the Constitution, equal treatment deserves to be given to all citizens. The State cannot contend that the restriction can be relaxed if the person belonging to reserved class is to do sale of liquor in hotel and boarding houses. When one speaks for restriction in the interest of general public, such restriction has to be common for everybody and every citizen will be required to face with the common restriction provided by the State in the rights of the citizen for trade or business. We may record that the Act read with the Rules when itself is a restriction in the business or trade of the liquor provided by the State, such restriction has to apply in the same manner to everybody and there cannot be different standard restriction if one is of a general category or one is of a reserved class. Therefore when one talks of restriction provided under Article 19(6) of the Constitution and the rights of the citizen under Article 19(1)(g) of the Constitution, it would not be open to the State to relax the restriction or qualification provided for enabling the citizen to do a particular business or trade. Of course, the aforesaid is with the clarification that it is open to the State to provide that a particular percentage of the business or sale of liquor of a hotel or boarding house may be retained by the State itself or the State may provide for a quota of a licence of hotel and boarding house for a particular class of a citizen may be reserved class. By the impugned amendment, the State has not provided for retaining of the business of sale of liquor in hotel and boarding house or the State has not provided for a particular percentage licence or a particular percentage of business for itself or for a reserved class. But the State for the same type of business has relaxed the restriction which otherwise has to meet with the test of Article 19(6) of the Constitution. It is hardly required to be stated that when one speaks of restriction in the interest of general public, there can be no compromise if the same business is to be undertaken by a person belonging to reserved class. Under the circumstances, if the provisions of the Act read with Rule has to meet with the test of Article 19(6) of the Constitution in the business of trade or business of liquor, relaxation in the requisition or qualification of a hotel and boarding house having minimum thirty double rooms capacity in

the Corporation area or twenty double rooms in the other areas cannot be made."

[emphasis added]

19. It is clear from the plain reading of the aforesaid passage, that this Court has expressly held that the said decision of reserving a quota of business for the reserved category would be permissible. Thus, the challenge to the proviso to Rule 5 of the Rules, which enables the Government to specify general reservations for licences to be auctioned, cannot be sustained on the strength of the said decision. As noted above, the decision was in the context of the relaxation of a restriction imposed in the Rules. The Court found that the variation of the said restrictive condition lacked nexus with the object of such a restriction. The Court held that the restriction was imposed in the public interest. Thus, the State could not relax it for a particular class of persons. The said restriction in question would necessarily be common to everybody.

Re: The impugned rules are not beyond the rule-making power

20. The learned Single Judge had found that, prima facie, the amended proviso to Rule 5 and Rule 5A, which introduce fresh conditions, namely reservation-based eligibility criteria and automatic forfeiture, travel beyond the scope of the enabling

provisions of the Excise Act. The said view is not based on any analysis of the relevant provisions.

21. At this stage, it would be relevant to examine the scheme of the Excise Act.

22. Chapter II (Sections 3 to 7) of the Excise Act provides for Establishment and Control. Under Section 3 of the Excise Act, the State Government may appoint an officer not below the rank of a Deputy Commissioner as Excise Commissioner for the State of Karnataka and he would be the chief controlling authority in all matters connected with the administration of the Act. Sections 4, 4-A and 5 of the Excise Act provide for the appointment and jurisdiction of Deputy Commissioners, Joint Commissioners, and Superintendents of Excise. Section 7 provides for delegation of powers. In terms of Sub-section (1) of Section 7, the State Government is empowered by notification to delegate to the Excise Commissioner or to any other Excise Officer any of its powers under the Act, except the powers under Section 67 and Section 71. It is relevant to note that Section 67 of the Excise Act contains the powers for exemption. The State Government is empowered, by notification and subject to such restrictions and conditions as it may specify to reduce or exempt the excise duty in respect of any liquor

sold or is also empowered to exempt any intoxicant from any provisions of the Act, other than those specified in Chapter V. Section 71 empowers the power of the State Government to make Rules for carrying out the purposes of the Act.

23. Chapter III (Sections 8 to 12) of the Excise Act contains provisions regarding import, export and transport of intoxicants. Sub-section (1) of Section 8 of the Excise Act prescribes import of no intoxicant, except under a permit granted by the Deputy Commissioner of Excise on payment of such countervailing duty and fees, as may be levied under the Act. Similarly, Sub-section (1) of Section 9 prohibits the export of intoxicants, except under a permit. Section 10 empowers the State Government to prohibit the transport of any intoxicant from any local area into any other local area. Section 11 prohibits the transportation of any intoxicant exceeding the quantities that may be prescribed, except under a permit issued under Section 12. Section 12 empowers the Deputy Commissioner or any other person empowered by the State Government in that behalf to issue permits for the transportation of intoxicants.

24. Chapter IV (Sections 13 to 21) of the Excise Act contains provisions regarding manufacture, possession and sale of

intoxicants. Sub-section (1) of Section 13 of the Excise Act, *inter alia*, prohibits any person from manufacturing or collecting an intoxicant, cultivating a hemp plant, tapping a toddy-producing tree, constructing or working a distillery or brewery, bottling liquor for sale or possessing any material or any intoxicant other than toddy, except under the authority and subject to the terms and conditions of the licence. Section 13-A prohibits tapping of Neera from coconut trees or further processing it, except under a licence.

25. Similarly, Sections 14 and 15 prohibits possession of excisable articles beyond the specified quantity and sale of the same without a licence. Section 15-A of the Excise Act prohibits any person in charge of the management or control of any public place to allow consumption of liquor unless the consumption in such places is permitted under the licence granted by the Excise Commissioner or the Deputy Commissioner.

26. Section 17 of the Excise Act contains powers for grant of lease of right to manufacture. The State Government is empowered to lease to any person, on such conditions and for such period as it may think fit, the exclusive or other right to manufacture or supply by wholesale or of both and for selling in wholesale or by retail any

Indian liquor. Under Sub-section (2) of Section 17, the licensing authority may also grant licence to a lessee in terms of the lease.

27. Chapter V (Sections 22 to 25) of the Excise Act contains provisions regarding Excise Duty and Countervailing Duty.

28. Section 24 of the Excise Act provides for levy and collection of licence fee or privilege fee as may be determined by the State Government subject to such rules as may be prescribed in consideration of grant or renewal of a licence or lease or both. Section 24-A of the Excise Act empowers the Excise Commissioner or Deputy Commissioner, subject to such rules as may be prescribed, to grant a licence for the exclusive or other privilege for importing or supplying by wholesale or retail any foreign liquor manufactured outside India. Under Sub-section (3) of Section 24-A, the State Government is empowered to levy such licence fee, privilege fee, vend fee or other any form of fee as consideration of the licence.

29. Chapter VI (Sections 26 to 31) of the Excise Act contains provisions for licences and permits. Section 26(1) provides that every licence or permit shall be granted on payment of such fees, for such period, and subject to such restrictions and on such

conditions, and shall be in such Form and shall contain such particulars as may be prescribed. Section 29 of the Excise Act empowers the State Government to cancel the licence for costs that are stipulated in various clauses. Section 30 of the Excise Act empowers the licensing authority to withdraw the licence for reasons other than those specified in Section 29, on not less than thirty days' notice in writing of its intention to do so. In such a case, the proportionate fee to the unexpired portion of the term of the licence is required to be refunded to the licensee. Under Section 31 of the Excise Act, the licensee can also surrender his licence.

30. Chapter VII of the Excise Act contains provisions regarding offences and penalties. Chapter VIII of the Excise Act contains provisions regarding the detection, investigation and trial of offences. Chapter IX contains provisions regarding appeals and revision. Chapter X contains miscellaneous provisions.

31. The purpose of the Excise Act, as expressly stated in its object, is to provide a uniform law as to production, manufacture, possession, import, export, transportation, purchase and sale of liquor and intoxicants.

32. Section 71 of the Excise Act enables the State Government to make Rules to carry out the purposes of the said Act. Sub-section (2) of Section 71 also explicitly specifies the matters in which the State Government can make rules. Sub-section (1) and Clauses (e), (f) and (h) of Section 71 (2) of the Excise Act are relevant and are set out below:

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

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules,-

(a) x x x x x;

(b) x x x x x;

(c) x x x x x

(d) x x x x x

(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;

(f) prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale is granted for any locality;

(g) x x x x x

(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;

(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;

(iii) prescribe the amount of security to be deposited by the holders of any licence or permit for the performance of the conditions of the same;

(iv) prescribe the accounts to be maintained and the returns to be submitted by licence holders;

(v) prohibit or regulate the transfer of licences; and

(vi) prescribe the ages under which it shall be unlawful to employ children and to sell or give to children excisable articles;

(i) **

(j) **

(k) **

(l) **

(m) **

(n) **”

33. It is clear from the scheme of the Excise Act that all commercial activities in respect of intoxicants, including liquor, are prohibited without a permit, lease or licence. The State Government is also empowered to levy countervailing duty, excise duty, as well as privilege fees, licence fees, and vend fees as consideration for the licences. There is no specific provision in the Excise Act that designate particular persons or a class of persons to whom licences may be granted (the Act leaves this to be prescribed by the Rules) or the manner in which the licences are to be granted. As noted

above, under Section 17 of the Excise Act, the State Government has the power to lease to any person, on such conditions and for such period as it thinks fit, the exclusive or other right of manufacture or supply by wholesale or by retail any Indian liquor or any intoxicant drug within the specified area.

34. It is clear from the above that the State Government not only has the power to contractually lease any right regarding the manufacture, distribution or sale of Indian liquor or intoxicant in a specified area, but it also has wide powers to make rules to carry out the purposes of the Excise Act. Sub-section (1) of Section 71 of the Excise Act is couched in wide terms. The opening words of Sub-section (2) of Section 71 of the Excise Act also make it explicitly clear that the matters specified in various clauses are without prejudice to the generality of the provisions of Sub-section (1) of Section 71 of the Excise Act. Thus, Sub-section (2) of Section 71 does not limit the powers of the State Government, but merely indicates some of the matters regarding which the State Government can make rules.

35. Bearing the aforesaid in mind, we may now proceed to examine whether, *prima facie*, the impugned rules have travelled beyond the rule-making power. As noted earlier, the learned Single

Judge had found that the matters relating to eligibility criteria (reservation) and forfeiture of licence travel beyond the Excise Act. As far as the forfeiture of licences is concerned, the challenge essentially is to the provisos to Rule 5-A of the Excise Rules. However, a plain reading of the proviso to Rule 5-A indicates that it does not provide for any forfeiture of licence.

36. A licence can be cancelled in terms of Section 29 of the Excise Act for the reasons as set down therein or withdrawn prematurely in terms of Section 30 of the Excise Act, except that in case of a withdrawal under Section 30 of the Act, the State Government would have to refund the part of the licence fee commensurate with the unexpired portion of the licence. The proviso to Rule 5-A mainly curtails the right of renewal. There is no provision in the Excise Act which provides for a perpetual right of renewal of a licence. On the contrary, Section 26(1) of the Excise Act expressly provides that every licence or permit shall be granted on payment of fees "for such period as may be prescribed."

37. The proviso to Rule 5-A of the Excise Rules merely provides for forfeiture of the right to renew certain licences [CL-2, CL-9 and CL-11(C)], which are not renewed as on the date of publication of the impugned rules. Thus, the proviso curtails the renewal of

licences. The Excise Act does not provide for renewal of licences. The provision for renewal is a right conferred by the Rules.

38. Plainly, if the Rules can provide for the renewal of the licence, they could also provide for curtailing the said right. We are unable to accept that whilst the Rules could provide for renewal of licences, it could not limit the same.

39. Clause (e) of Sub-section (2) of Section 71 of the Excise Act expressly empowered the State Government to make rules for regulating the periods, and localities in which, and the persons or classes of persons to whom, licences may be granted. Thus, making rules for renewal or restricting the same is clearly, with the rule making power of the State Government.

40. The learned court's *prima facie* finding as to the eligibility criteria (reservation) for the grant of a licence refers to Rule 5 of the Excise Rules. A plain reading of the said proviso indicates that it has two limbs. First, is to grant CL-2A and CL-9A licences to successful bidders in e-auctions, and second, to follow the reservation norms fixed by the government for this purpose.

41. Undisputedly, the State Government can make Rules for regulating the persons or class of persons to whom the licences for

wholesale or retail sale of intoxicants may be granted. It also enables the State Government to prescribe the terms and conditions under which any licence or permit may be granted. Section 71(2)(f) of the Excise Act provides that the State Government also has the power to make rules prescribing the procedure to be followed.

42. Thus, clearly, the State Government has the power to frame rules for the grant of licences by auction. It is not necessary that all terms and conditions of the auction be expressly stipulated in the Rules. The State Government has ample elbow room to determine the terms and conditions of the auction.

43. The Excise Act explicitly empowers the State Government to make rules for regulating the periods for which, the localities in which, and the persons or classes of persons to whom, licences are to be granted. Thus, curtailing the period during which the application for renewal may be made and disallowing renewal of certain licences are well within the rule-making power of the State Government.

44. The contention that the State Government cannot grant licences by auction or provide the conditions of such licences, is plainly ill-founded.

45. The power to make rules for the grant of licences and for regulating the persons or classes of persons to whom licences may be granted enables the State Government to make rules, which provide for reservation. The question whether the Rules can enable the State Government to specify the reservation, or whether this must necessarily be set out in the Rules, requires examination, and this question cannot be considered in isolation and must be addressed bearing in mind the nature of the grant of licence and the extent of the powers of the State Government amongst other factors.

THE NATURE OF THE LICENCE

46. At this stage, it is necessary to note that the manufacture, distribution and sale of intoxicants is the State's privilege and, thus, the State can determine the terms and conditions on which such privilege can be parted.

47. We may note that way back 1954, in **Cooverjee B. Bharucha v. Excise Commissioner**⁷, the Supreme Court had rejected the contention that by virtue of Article 19(1)(g) of the Constitution of India a person has a right to carry on trade in intoxicating liquors and that the State had no right to create a monopoly in them. The

⁷ 1954 SCC OnLine SC 66.

court referred to a passage from the decision of the US Supreme Court in *Crowley v. Christensen* [*Crowley v. Christensen*, 1890 SCC OnLine US SC 226: 34 L Ed 620 and concurred with the view that “there is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority.”

48. In **Nashirwar v. State of M.P.**⁸ the Supreme Court explained 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 medicinal 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.

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35. Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not

⁸ (1975) 1 SCC 29

permissible with other trades are lawful and reasonable so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest and harmful and dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants viz. manufacture, collection, sale and consumption. The State has exclusive right to manufacture and sell liquor and to sell the said right in order to raise revenue. That is the view of this Court in *Bharucha case* [AIR 1954 SC 220 : 1954 SCR 873] and *Jaiswal case* [(1972) 2 SCC 36 : (1972) 3 SCR 784]. The nature of the trade is such that the State confers the right to vend liquor by farming out either in auction or on private treaty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. Rental is neither a tax nor an excise duty. Rental is the consideration for the agreement for grant of privilege by the Government.”

49. It is well accepted that the State has the exclusive rights in matter of manufacture, distribution and sale of intoxicants. In **State of Orissa v. Harinarayan Jaiswal**⁹ the Supreme Court observed:

“Public auctions are held to get the best possible price... The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government—nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights. The High Court was wholly wrong in thinking that purpose of Sections 22 and 29 of the Act was not to raise revenue. Raising revenue as held by this Court in *Cooverjee B. Bharucha case* was one of the important purposes of such provisions. The fact that the price fetched by the sale of country liquor is

⁹ (1972) 2 SCC 36

an excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue..”

50. In **Har Shankar v. Excise & Taxation Commissioner**¹⁰, the Supreme Court reiterated that the rights to manufacture and sell liquor vest with the state. The court further observed:

“55. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration. By Article 298 of the Constitution, the executive power of the State extends to the carrying on of any trade or business and to the making of contracts for any purpose.”

51. In **Panna Lal v. State of Rajasthan**¹¹, the Supreme Court explained that the fee charged by the state for the grant of a licence was a matter of *quid pro quo*, in the following words:

“20. The licence fee stipulated to be paid by the appellants is the price or consideration or rental which the Government charges from the licencees for parting with its privilege in stipulated lump sum payment and is a normal incident of a trading or business transaction”

52. It is clear that the licence is a grant of a privilege which exclusively vests with the State Government. The State Government has framed Rules in exercise of the powers under Section 71 of the Excise Act, which are wide in scope.

¹⁰ (1975) 1 SCC 737

¹¹ (1975) 2 SCC 633

53. The petitioners' challenge to the proviso, which enables the grant of a licence through e-auction in accordance with the government-fixed reservation norms, is that it exceeds the delegated powers. Undisputedly, the Excise Act empowers the State Government to frame rules regarding persons or classes of persons to whom licences may be granted. Providing for a quota for reserved categories falls within the scope of the said rules. The key question is whether it is necessary for the Rules to expressly specify the norms and the extent of the reservation, or whether it is permissible to provide for the adoption of the norms fixed by the Government for that purpose. According to the writ petitioners, it is not permissible to adopt the norms fixed by the state Government. Although not stated in so many words, the petitioners seek to invoke the principle of *delegata potestas non potest delegari*. The said maxim embodies the principle of the law of agency. It literally means that a delegated authority cannot be again delegated. Although the principle has its origin in the law of Agency, it is well accepted in administrative law. The courts have, in certain cases, also extended it to delegated legislation. However, this principle is not ubiquitous. It is settled that in cases where the principal legislation itself empowers the framing of a delegated legislation to further sub-delegate certain acts, the delegated legislation would not

be amenable to challenge on the said ground. The delegated legislation may also require certain authorities to perform acts incidental to the exercise of the delegated power. The question whether the subordinate legislation can be challenged on the ground of sub-delegation also requires examination, bearing in mind the nature of sub-delegation and the nature of power.

54. In the present case, it is important to bear in mind that the matters of manufacture, distribution, sale and possession of intoxicants are a privilege of a State. The powers of the State under Article 162 of the Constitution would extend to matters dealing with such privileges. Thus, even in the absence of any legislation in this regard, the decision to grant licences would be a matter of policy.

55. In **Kuldeep Singh vs Govt. of NCT Of Delhi**¹², the Supreme Court rejected the contention that the applicants applied for licence and the policy had any vested or accrued right under the application to be considered under the said policy. The Supreme Court observed that "the matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State. The State had the right to adopt the policy decision; they indisputably had a right to vary, amend or rescind the same". Since the Act does not

¹² (2006) 5 SCC 702

specifically provide for any class of persons or persons to whom a licence could be conferred, and the power to frame rules is conferred on the State Government, the State, would not be precluded to make rules for adopting its policy in regard to reservation. Further, the principle that delegated authority cannot be sub-delegated may not strictly apply where the delegatee and the authority to whom the powers are delegated is the same.

56. In the present case, the Excise Act empowered the State Government to frame rules. If we read the proviso to Rule 5 as sub-delegating the power to specify the reservations for licences, then it is also important to consider that the delegatee is no other than the State Government itself. This would imply that the delegatee and the sub-delegatee are the same.

57. In this regard, we may refer to the decision of the Supreme Court in **Arun Tewari & Ors vs Zila Mansavi Shikshak Sangh**¹³. In this case the Supreme Court considered the challenge to the amendment to Rule 10(3) of the Recruitment Rules on the ground of excessive delegation. Rule 10 of the Recruitment Rules is as follows:

¹³ (1998) 2 SCC 332

“10. *Direct Recruitment by selection.*—(1) There shall be a Committee for selection by direct recruitment, the membership of which shall be like the membership of the Committee constituted for selection by promotion.

(2) Selection for recruitment to the service shall be held at such intervals as the appointing authority may from time to time determine.

(3) The selection of candidates for service shall be made by the Committee by conducting a competitive examination and after interviewing them.”

Provided that in any specific circumstance the State Government may, in consultation with the General Administration Department prescribe the criteria and procedure for the selection of candidates.”

57.1 The concerned School Education Department proposed a scheme for the selection of Assistant Teachers under the proviso to Rule 10(3) of the said Rules. The same was approved, and the recruitment process was initiated. The selection of Assistant Teachers was to be made by a Committee presided over by a nominated officer. In this context, the appellant contended that the proviso to Rule 10(3) was invalid because it confers unguided and excessive delegation of powers on the State Government in the matter of criteria and procedure for recruitment.

57.2 The Supreme Court rejected the said challenge, inter alia, on the ground that the power to frame these criteria and procedure was not delegated to any subordinate authority. The court noted that:

“The very authority which framed the original rules is delegated the power to frame special rules prescribing criteria and procedure in specific circumstances in consultation with the General Administration Department. The question of excessive delegation does not, therefore, arise because the rule-making authority has given to itself the power to prescribe criteria and procedure for selection in specific circumstances.”

57.3 The Supreme Court also referred to the decision of the constitution bench in **Workmen v. Meenakshi Mills Ltd.**¹⁴, wherein it was held that when the discretion is given to the Government itself and not to a subordinate officer, it cannot be said that there is excessive and uncontrolled delegation.

58. In view of the above, we are unable to accept that the proviso providing for the adoption of the norms of reservations as fixed by the State Government, falls foul of the Constitution of India. We, however, note that the learned Advocate General, on instructions, stated that to obviate any objection in this regard, the State Government would take steps to specifically provide the norms of reservation in the Rules.

THE PETITIONERS ACQUIRED NO VESTED RIGHTS

59. The contention that the impugned Rules have the effect of taking away the vested rights is, plainly, insubstantial and without

¹⁴ (1992) 3 SCC 336

any merit. The contention is premised on an erroneous understanding of the meaning of a 'vested right' and the very nature of the licence. We may, at the outset, note certain binding authorities, which explain the meaning of a vested right.

60. In **Bibi Sayeeda v. State of Bihar**¹⁵ the Supreme Court referred to the definition of the word 'vested' as defined in in *Black's Law Dictionary* (6th Edn) and observed as under:

"Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights."

61. In a later decision, **MGB Gramin Bank v. Chakrawarti Singh**¹⁶, the Supreme Court referred to **Bibi Sayeeda v. State of Bihar** (supra) and explained that the rights are vested when they become property and are not contingent on the anticipated continuance of laws. We consider it apposite to refer to the following extract of the said decision:

"11. The word "vested" is defined in *Black's Law Dictionary* (6th Edn.) at p. 1563, as:

"Vested.—fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property

¹⁵ (1996) 9 SCC 516

¹⁶ (2014) 13 SCC 583

of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights'."

12. In *Webster's Comprehensive Dictionary* (International Edition) at p. 1397, "vested" is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide *Bibi Sayeeda v. State of Bihar* [(1996) 9 SCC 516 : AIR 1996 SC 1936] and *J.S. Yadav v. State of U.P.* [(2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140])

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed. [Vide *Kuldeep Singh v. Govt. (NCT of Delhi)*. [(2006) 5 SCC 702 : AIR 2006 SC 2652]"

62. In **Howrah Municipal Corpn. v. Ganges Rope Co. Ltd.**¹⁷, the Supreme Court observed that "the word 'vest' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word 'vest' has also acquired a meaning as 'an absolute or indefeasible right'.

63. There is no dispute that the licence granted is for a term of one year commencing 1st of July. Thus, the right to deal in liquor under the licence is for a fixed term. There is no indefeasible right to

¹⁷ (2004) 1 SCC 663

continue to enjoy the licence beyond its terms. The licence, in the prescribed form, also expressly states the period for which it is granted. The licensee's right to renewal is determined by the rules existing at the time of renewal. There is no right to insist that the rules pertaining to renewal, as on the date of grant of licence, shall continue to be operative and vest an indefeasible right to renewal in perpetuity. The question whether the licence is to be renewed depends on the rules as applicable at the time of renewal and not at the time of the grant.

64. In **State of Kerala v. B. Six Holiday Resorts (P) Ltd.**¹⁸ the Supreme Court considered a challenge to an order of Special Secretary (Taxes), Government of Kerala, rejecting an application, inter alia, on the ground that the policy in vogue was not to grant licences. The respondent challenged the Notification dated 20-2-2002, amending the Foreign Liquor Rules by the Foreign Liquor (Amendment) Rules, 2002, with retrospective effect from 1-7-2001. By the said amendment, the last proviso under sub-rule (3) of Rule 13 was substituted by the following proviso: "Provided that no new licences under this Rule shall be issued." The notification contained

¹⁸ (2010) 5 SCC 186

the following Explanatory Note to indicate the purpose of the amendment:

“Government have decided as its policy not to grant any new FL-3 Hotel (Restaurant) Licences and also decided not to renew any defunct licences of the above category with effect from 1-7-2001 until further orders. In order to carry out the above decision, necessary amendments have to be made in the relevant rules.”

64.1 The Supreme Court framed the following questions for consideration:

“(i) Whether an application for grant of FL-3 licence should be considered with reference to the Rules as they existed when the application was made or in accordance with the Rules in force on the date of consideration?

(ii) Whether the amendment to Rule 13(3) of the Foreign Liquor Rules substituting the last proviso is valid?”

64.2 The Supreme Court observed that question (i) is directly covered by the decision of this Court in **Kuldeep Singh v. Govt. of NCT of Delhi**¹⁹ and set out the following extract from the said decision:

“29. It is not in dispute that the State received a large number of applications. It was required to process all the applications. While processing such applications,

¹⁹ (2006) 5 SCC 702

inspections of the proposed sites were to be carried out and the contents thereof were required to be verified. For the said purpose, the applications were required to be strictly scrutinised.

30. Unless, therefore, an accrued or vested right had been derived by the appellants, the policy decision could have been changed.

31. What would be an acquired or accrued right in the present situation is the question.

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36. In a case of this nature where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16-9-2005 not to grant L-52 licence, no licence could have been granted after the said date.”

64.3 The Supreme Court further observed as under:

“27. It is true that in Kuldeep Singh case [(2006) 5 SCC 702] there were no statutory rules and what was considered was with reference to a policy. But the ratio of the decision is that where licence sought related to the business of liquor, as the State has exclusive privilege and its citizens had no fundamental right to carry on business in liquor, there was no vested right in any applicant to claim an FL-3 licence and all applications should be considered with reference to the law prevailing as on the date of consideration and not with reference to the date of application. Whether the issue relates to amendment to Rules or change in policy, there will be no difference in principle. Further, the legal position is no different even where the matter is governed by statutory rules, is evident from the decisions in Hind Stone [(1981) 2 SCC 205] and Howrah Municipal Corpn. [(2004) 1 SCC 663]

28. Having regard to the fact that the State has exclusive privilege of manufacture and sale of liquor, and no citizen

has a fundamental right to carry on trade or business in liquor, the applicant did not have a vested right to get a licence. Where there is no vested right, the application for licence requires verification, inspection and processing. In such circumstances it has to be held that the consideration of application of FL-3 licence should be only with reference to the rules/law prevailing or in force on the date of consideration of the application by the Excise Authorities, with reference to the law and not as on the date of application. Consequently, the direction by the High Court that the application for licence should be considered with reference to the Rules as they existed on the date of application cannot be sustained.”

64.4 The Supreme Court rejected the challenge to the validity of the proviso and answered question (ii) in the negative in the following words:

“**29.** The applicants for licence submitted that Rule 13(3) contemplates FL-3 licences being granted on fulfilment of the conditions stipulated therein; and the newly added proviso, by barring grant of new licence had the effect of nullifying the main provision itself. It was contended that the proviso to Rule 13(3) added by way of amendment on 20-2-2002 was null and void as it went beyond the main provision in Rule 13(3) and nullified the main provision contained in Rule 13(3).

30. Rule 13(3) provides for grant of licences to sell foreign liquor in hotels (restaurants). It contemplates the Excise Commissioner issuing licences under the orders of the State Government in the interest of promotion of tourism in the State, to hotels and restaurants conforming to standards specified therein. It also provides for the renewal of such licences. The substitution of the last proviso to Rule 13(3) by the Notification dated 20-2-2002 provided that no new licences under the said Rule shall be issued. The proviso does not nullify the licences already granted. Nor does it interfere with renewal of the existing licences. It only prohibits grant of further licences. The issue of such licences was to promote tourism in the State. The promotion of tourism should be balanced with the general public interest. If on account of the fact that

sufficient licences had already been granted or in public interest, the State takes a policy decision not to grant further licences, it cannot be said to defeat the Rules. It merely gives effect to the policy of the State not to grant fresh licences until further orders. This is evident from the explanatory note to the amendment dated 20-2-2002. The introduction of the proviso enabled the State to assess the situation and reframe the excise policy.

31. It was submitted on behalf of the State Government that Rule 13(3) was again amended with effect from 1-4-2002 to implement a new policy. By the said amendment, the minimum eligibility for licence was increased from two-star categorisation to three-star categorisation and the ban on issue of fresh licences was removed by deleting the proviso which was inserted by the amendment dated 20-2-2002. It was contended that the amendments merely implemented the policies of the Government from time to time. There is considerable force in the contention of the State. If the State on a periodical reassessment of policy changed the policy, it may amend the Rules by adding, modifying or omitting any rule, to give effect to the policy. If the policy is not open to challenge, the amendments to implement the policy are also not open to challenge. When the amendment was made on 20-2-2002, the object of the newly added proviso was to stop the grant of fresh licences until a policy was finalised.

32. A proviso may either qualify or except certain provisions from the main provision; or it can change the very concept of the intendment of the main provision by incorporating certain mandatory conditions to be fulfilled; or it can temporarily suspend the operation of the main provision. Ultimately the proviso has to be construed upon its terms. Merely because it suspends or stops further operation of the main provision, the proviso does not become invalid. The challenge to the validity of the proviso is therefore rejected.

65. It is also well settled that there is no estoppel against statute.

We consider it apposite to refer to the following observations of the

Supreme in the decision in **Prashanti Medical Services & Research Foundation v. Union of India**²⁰.

“25. ... a plea of promissory estoppel is not available to an assessee against the exercise of legislative power and nor any vested right accrues to an assessee in the matter of grant of any tax concession to him. In other words, neither the appellant nor the assessee has any right to set up a plea of promissory estoppel against the exercise of legislative power such as the one exercised while inserting sub-section (7) in Section 35-AC of the Act (see *Motilal Padampat Sugar Mills Co. Ltd. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144]* and other cases relied on by the learned counsel for the respondent Revenue). It is more so when we find that this sub-section was made applicable uniformly to all alike the appellant prospectively.”

When we consider that the licence is in the nature of parting with privilege – which otherwise vests exclusively with the State – to the licencees to carry on manufacture or trade in liquor and intoxicants; we are unable to accept that fixing the terms and conditions on which licence may be granted would exceed the powers of the State Government. The proviso to Rule 5 of the Rules, inserted by the impugned rules framed the State Government in exercise of its powers under Section 71 of the Excise Act, merely provides for adopting its policy in regard to reservations. Viewing it from this perspective, we find it difficult to accept that the same would fall foul of the principle of *delegatus non potest delegare*. As noticed above, the Excise Act delegates the rule making powers to the State Government and the Rules framed by the State Government are to the effect of incorporating its own policy as the part of the Rules. Principle of sub-delegation may not apply where the delegator and the delegate are the same. Whilst it is correct that the Rules are required to be placed before the Legislative Assembly and there may not be any such requirement for the policy as to the reservation norms. However, in our view this may not be material if one examines the language of the proviso; it simply provides for incorporation of the State

²⁰ 2020(14) SCC 785

Government's policy as to reservation. This is akin to incorporation of the State's policy by reference rather than an incidence of sub-delegation. In view of the above, we find no merit in the contention that the impugned Rules to the extent it provides for introducing the proviso to Rule 5 of the Rules is invalid.

THE LACK OF UNIFORMITY IN THE TERMS OF THE LICENCES DOES NOT VIOLATE ARTICLE 14 OF THE CONSTITUTION OF INDIA

66. The contention that selecting only three categories of licences or providing for the forfeiture of only three categories of lapsed licences is discriminatory and offends Article 14 of the Constitution of India is also without any merit. Article 14 of the Constitution of India permits reasonable classification. In the present case, Rule 3 of the Rules sets out various classes of licences issued for different establishments. It is erroneous to contend that all licences must be governed by similar terms.

67. As noted before, grant of licence is a matter of *quid pro quo*. The State is thus entitled to determine the terms and conditions on which the privilege is granted. It is fully entitled to grant privileges on varied terms. Thus, there can be multiple types of licences with varied terms and conditions. There is no principle of law, which confines the State to enter into only one type of contract and restrict its freedom to enter into contracts with varying terms. However, the

State cannot discriminate in allowing participation in securing the contracts offered by it. As long as the participation is not arbitrarily restricted, no grievances can be raised on the ground of Article 14 of the Constitution of India on account of lack of uniformity in the contracts. Issuance of various types of licences with varying terms and conditions does not offend the equal protection clause.

PRESUMPTION AS TO CONSTITUTIONALITY

68. It is also necessary to bear in mind that there is a presumption of constitutional validity of the legislative instruments unless it is established that a particular piece of legislation is ultra vires of the Constitution of India. It must be presumed that the same is Constitutional. However, in the present case, it does not appear that the learned Single Judge had examined the rival contentions. The impugned order is based mainly on an observation that, prima facie, the rules travel beyond the rule-making, which requires examination. Legislation, including subordinate legislation, is presumed to be valid. Thus, unless a very strong case of invalidity of the legislation is made out, its operations cannot be stayed.

69. In **Nand Kishore v. State of Punjab**²¹, albeit in a different context, the Supreme Court observed as under:

“ Raising the constitutionality of a provision of law, as it appears to us, stands on a different footing than raising a matter on a bare question of law, or mixed question of law and fact, or on fact. There is a presumption always in favour of constitutionality of the law. The onus is heavy on the person challenging it. It is by the discharge of onus that the presumption of constitutionality can be crossed over.”

70. The considerations for examining the constitutional validity of subordinate legislation and executive action on the ground of unreasonableness also stand on a separate footing. In **Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environment Action Group**²², the Supreme Court had observed:

“Judicial review of administrative action and judicial review of legislation stand on a different footing. What is permissible for the court in case of judicial review of administrative action may not be permissible while exercising the power of judicial review of legislation.”

71. In **Sharma Transport Represented by D.P. Sharma v. Government of A.P.**²³ the Supreme Court had observed as follows:

“The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it

²¹ (1995) 6 SCC 614

²² In (2006) 3 SCC 434

²³ (2002) 2 SCC 188

must be shown that it was not reasonable and manifestly arbitrary. The expression “arbitrarily” means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.”

72. The grounds on which delegated or subordinate legislation can be challenged are essentially the same, except that delegated legislation may also be challenged on the ground that it is *ultra vires* the principal legislation. However, the presumption that the legislation is valid applies equally to subordinate legislation. The following passages from the decision of the Supreme Court in **State of A.P. v. P. Laxmi Devi**²⁴ – although in the context of a legislative enactment and not subordinate legislation – are instructive:

“ 44. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that

²⁴ (2008) 4 SCC 720

requires giving a strained construction or narrowing down its scope vide Rt. Rev. Msgr. Mark Netto v. State of Kerala [(1979) 1 SCC 23 : AIR 1979 SC 83] SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.

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56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the judges' personal preferences. The court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step. As observed by this Court in State of Bihar v. Kameshwar Singh [(1952) 1 SCC 528 : AIR 1952 SC 252] : (AIR p. 274, para 52)

“52. ... The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence....”

57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality.”

73. In the present case, we are unable to, *prima facie*, accept that the writ petitioners have surmounted the presumption of constitutionality.

74. We are unable to readily accept that the impugned Rules are *ex facie* invalid and that the petitioners have made out a case warranting a stay of the impugned Rules. The impugned order disregards settled principles as discussed hereinbefore and therefore is liable to be set aside.

75. The respondents have also challenged the insertion of proviso to Rule 12 of the Rules whereby CL-2A licences are excluded from the scope of Rule 12 of the Rules. Although, it is contended that the said exclusion of CL-2A licences is arbitrary, we do not think it necessary to address this issue at this stage. We are refraining from examining the said question at this stage for several reasons. First, that the impugned order is not premised on the challenge to the proviso to Rule 12 of the Rules; second, we have not heard detailed oral submissions on this question; and third, that the learned AGA has at the outset submitted that the auction proposed to be conducted would be confined to the number of licences that had lapsed and those that belonged to the state authorities / agencies. We thus reserve the liberty of the parties to advance their submissions regarding their challenge to proviso to Rule 12 of the Rules before the learned Single Judge in the pending petition. However, we are unable to accept that any interim orders are warranted.

76. We are also conscious that although the present appeal arises from an ad-interim order, our observations and findings as noted hereinbefore would finally conclude some of the issues as raised by the appellants. However, since the parties had advanced

arguments and invited a ruling on the contentious questions, we did not consider it apposite to refrain from rendering a decision on the contentions advanced.

77. The appeal is allowed and the impugned order is set aside.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

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