

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 1st OF AUGUST, 2024

WRIT PETITION No. 19955 of 2024

M/S HIMALAYA TRADERS (A PARTNERSHIP FIRM)

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anvesh Shrivastava - Advocate for petitioner.

Shri Swapnil Ganguly - Deputy Advocate General for respondents/State.

ORDER

This petition under Article 226 of Constitution of India has been against the order dated 16.05.2024 passed by Collector (Excise), District Bhopal by which petitioner, who is a licensee has been directed to shift his composite liquor shop to Karol Road.

2. It is submitted by counsel for petitioner that earlier petitioner was granted license to run a composite liquor shop at Habibganj Pathtak. Thereafter, he was directed to temporarily shift the shop in front of Think Gas Petrol Pump and now by order dated 16.05.2024 petitioner has been directed to shift his shop for the third time to Karol Road which is approximately 6 kms. away from the present place of location/ shop of petitioner. It is further submitted that reasons for shifting are not correct. Because of frequent shifting, petitioner would be required to bear the additional charges of shifting.

3. Heard learned counsel for petitioner.
4. The Supreme Court in the case of **Khoday Distilleries Ltd. and others v. State of Karnataka and others**, reported in (1995) 1 SCC 574 has held as under:

“60. We may now summarise the law on the subject as culled from the aforesaid decisions.

- (a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.
- (b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.
- (c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.
- (d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the

raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

- (e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.
- (f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.
- (g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

- (h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.
- (i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.
- (j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.
- (k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.
- (l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m)The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.”

5. The Supreme Court in the case of **State of Punjab and another v. Devans Modern Breweries Ltd. and another**, reported in (2004) 11 SCC 26 has held as under:

“103. It is well settled by a catena of decisions that trade in liquor is not a fundamental right. It is a privilege of the State. The State parts with this privilege for revenue consideration.

113. In my opinion, Articles 301 and 304(a) of the Constitution are not attracted to the present case as the imposition of import fee does not, in any way, restrict trade, commerce and intercourse among the States. In my opinion, the permissive privilege to deal in liquor is not a “right” at all. The levy charged for parting with that privilege is neither a tax nor a fee. It is simply a levy for the act of granting permission or for the exercise of power to part with the privilege. In this context, we can usefully refer to *Har Shankar v. Dy. Excise and Taxation Commr.* [(1975) 1 SCC 737 : AIR 1975 SC 1121 : (1975) 3 SCR 254] and *Panna Lal v. State of Rajasthan* [(1975) 2 SCC 633] . As noticed earlier, dealing in liquor is neither a right nor is the levy a tax or a fee. Articles 301-304 will be rendered inapplicable at the threshold to the activity in question. Further, there is not even a single judgment which upholds the applicability of Articles 301-304 to the liquor trade. On the contrary, numerous judgments expressly hold these articles to be inapplicable to trade, commerce and intercourse in liquor. We can beneficially refer to the judgments in *State of Bombay v. R.M.D. Chamarbaugwala* [AIR 1957 SC 699 : 1957 SCR 874] , *Har Shankar case* [(1975) 1 SCC 737 : AIR 1975 SC

1121 : (1975) 3 SCR 254] , *Sat Pal and Co. v. Lt. Governor of Delhi* [(1979) 4 SCC 232 : 1979 SCC (Tax) 322] and *Khoday case* [(1995) 1 SCC 574] . The learned counsel for the respondent submitted that Articles 301-304 are violated or transgressed. In view of discussions in the paragraphs above, it is clearly demonstrated as to how and why Articles 301-304 are inapplicable to liquor trade in any form.

141. We shall now consider the cases on the freedom guaranteed by Article 301 which is not available to liquor because it is a noxious substance injurious to public health, order and morality.”

6. Thus, it is clear that license to run a liquor shop is not a business but it is a privilege conferred by the State. Since the order under challenge is not violative of Article 19(1)(g) of Constitution of India as well as counsel for petitioner also could not point out the violation of any statutory provision, this Court is of considered opinion that this Court cannot consider the correctness of the reasons assigned by respondents for shifting of the shop.

7. Furthermore, it appears that multiple complaints were received with regard to location of the shop to a place which is situated in front of Think Gas Petrol Pump.

8. Under these circumstances, this Court is of considered opinion that no case is made out warranting interference.

9. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE