



2024:CGHC:34281-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 4226 of 2024**

North East Feed And Agro Exports Private Limited, A Registered Company Registered Under The Companies Act, 1956 Through Its Director Namely Nirmal Singh Bhatia S/o Shri Ranjeet Singh Bhatia, Aged About 54 Years, Heaving Its Registered Office At B-20 House Of Dr. Bhagwat Near Maha Koushal Press Ravi Nagar, Raipur, District-Raipur (C.G.)

---- Petitioner**versus**

1 - State Of Chhattisgarh Through Special Secretary, Commercial Tax (Excise) Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, District- Raipur (C.G.)

2 - Commissioner (Excise) Commercial Tax, Gst Bhawan, North Block, Sector-19, Nawa Raipur, District- Raipur (C.G.)

3 - Chhattisgarh State Beverages Corporation Limited, Raipur Through Its Managing Director, Abkari Bhawan, Labhandi, Raipur, District-Raipur (C.G.)

4 - Chhattisgarh State Marketing Corporation Limited (A Government Of Chhattisgarh Undertaking), Through Its Managing Director, 4th Floor, Abkari Bhawan Near Chokra Nala, Labhandi, Raipur, District- Raipur (C.G.)

---- Respondents**WPC No. 4235 of 2024**

Vodabox Electromech Private Limited C.O. Ms. Track Events And Promoters, A Registered Company Registered Under The Companies Act, 1956 Through-Its Director Namely Saurabh Jaiswal, S/o. Dilip Jaiswal, Aged About 32 Years, The Company Having Its Registered Office At Shop No. 2, FI, VIP Road, Raipur, District- Raipur (C.G.).

----Petitioner

Versus

1 - State Of Chhattisgarh Through- Special Secretary, Commercial Tax (Excise) Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, District- Raipur (C.G.).

2 - Commissioner (Excise) Commercial Tax Gst Bhawan, North Block, Sector- 19, Nawa Raipur, District- Raipur (C.G.).

3 - Chhattisgarh State Beverages Corporation Limited, Raipur, through its Managing Director, Abkari Bhawan, Labhandi, Raipur, District- Raipur (C.G.).

4 - Chhattisgarh State Marketing Corporation Limited (A Government Of Chhattisgarh Undertaking), Through- Its Managing Director, 4th Floor, Abkari Bhawan, Near Chokra Nala, Labhandi, Raipur, District- Raipur (C.G.).

---- **Respondents**

For Petitioners	:	Mr. Manoj Paranjpe, Advocate {in Cr.M.P. No. 4226/2024}
		Mr. Amrito Das, Advocate. {in Cr.M.P. No. 4235/2024}
For Respondent/State	:	Mr. Prafull N Bharat, Advocate General with Mr. Sangharsh Pandey, Government Advocate.
For Respondent No. 4	:	Mr. Malay Shrivastava, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

04/09/2024

1. Since common facts and issue are involved in both these petitions, they are being considered and decided by this common order and WPC No. 4226/2024 is taken as the lead case.
2. The petitioner, in both the above petitions have prayed for the following relief(s):

“1] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders; direction/directions and order/letter dated 01.07.2024 (Annex.P/1) as well as directions/order dated 04.07.2024 (Annex.P/2), may kindly be set-aside and petitioner company may kindly be permitted to continue as per the licence issued to the company for a period commencing from 01.04.2024 to 31.03.2025.

2] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions and the Hon'ble Court may kindly be pleased to set-aside the NIT dated 11.07.2024 and all consequential actions thereto and the respondent authorities may kindly be directed not to finalize the contract with third, person, company, firm or corporation.

3] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions and the respondent authorities may kindly be directed to continue with the rate contract and licence granted to the petitioner company till 31.03.2025.

4] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.”

3. The facts, in brief, as projected in WPC No. 4226/2024, are that the petitioner is a registered company, under the Companies Act, 1956 and is holding the FL-10(A) License. The petitioner company entered into the rate contract with the respondent No. 4-Chhattisgarh State Marketing Corporation Limited (*for short, CSMCL*) for supply of Indian made foreign liquor (*for short, IMFL*) / foreign made foreign liquor (*for short, FMFL*) / Beer in the State of Chhattisgarh for a period from 01.04.2024 to 31.03.2025. The CSMCL issued notice inviting rate contract offers for registration and supply of foreign liquor in state of Chhattisgarh. The said

NIT was issued on 15.02.2024, inviting offers for firms having FL-10(A) and FL-10(B) license issued by the Excise Department. The petitioner company also participated in the said tender process and awarded the contract for supply of IMFL/FMFL/Beer in the State of Chhattisgarh for a period from 01.04.2024 to 31.03.2025. On 12.03.2024 the petitioner was awarded the contract for supply of IMFL/FMFL/Beer in the State of Chhattisgarh for a period from 01.04.2024 to 31.03.2025. The petitioner has paid the license fee of Rs. 20 lacs for the Depot situated at Siltara, District Raipur, Rs. 20 lacs was paid for the depot situated at Sirgitti Bilaspur and Rs. 20 lacs was paid for the depot situated at Arasnara, District Durg, total Rs. 60 Lacs were paid. Subsequently, on 11.07.2024 the State Government has amended Rule 8 of Chhattisgarh Foreign Liquor Rules, 1996 and FL-10(A) and FL-10(B) has been deleted and the decision has been taken that, Chhattisgarh State Beverage Corporation will directly purchased the IMFL and FMFL from the registered Companies. This amendment has been given effect from the date of issuance of the notification i.e. 11.07.2024/prospectively as per Clause No. 2 of the notification dated 11.07.2024.

4. According to Mr. Paranjpe, the licence and the rate contract awarded to the petitioner company from 01.04.2024 to 31.03.2025 has not been cancelled but the policy decision has been taken to purchase the IMFL and FMFL from its manufacturers directly. Vide letter dated 01.07.2024 the petitioner company was informed that, the old policy has been withdrawn and therefore, the contract for supply has been cancelled. The impugned order is illegal, erroneous and contrary to law.
5. The Excise Commissioner has issued a letter dated 04.07.2024 and directed the respondent No. 3 & 4 to apply the new proposed system

and certain directions have been issued which are also contrary to the Chhattisgarh Foreign Liquor Rules, 1996, which were in existence at the time of award of the contract or grant of FL-10(A) licence. On 26.02.2024, the Excise Commissioner Chhattisgarh has issued certain guidelines for FL-10(A) and FL-10(B) licensee. As per the policy decision the counterpart agreement was also executed between Government of Chhattisgarh acting through Excise Commissioner was also executed. As per the directions issued on 04.07.2024 the Excise Commissioner has directed Managing Director of CSMCL and Chhattisgarh State Beverages Corporation (*for short, CSBC*) not to issue any indenting (purchase orders). That, the licence was granted from 01.04.2024 to 31.03.2025 and on the basis of the subsequent amendment and policy decision, the licence of FL-10(A) which is in existence cannot be cancelled without its expiry i.e. till 31.03.2025. That, now the Respondent No. 2 has invited sealed offers from persons, firms, Companies or corporation engaged in manufacturing of IMFL /Malt for registration and entering into rate contract with the department Excise now Companies have also applied for offer the rate. According to the petitioner, the rates have not been finalized and contracts have not been entered into. If the manufacturing company would enter into a contract, the rate contract awarded to the petitioner would come to an end. When the offer was made the petitioner company huge amount has been invested for infrastructure and for establishment of the offices and other hidden expenses, due to the said policy decision. The petitioner company has also appointed so many persons for execution of the said contract.

6. The contract awarded to the petitioner cannot be cancelled unilaterally as it is a cardinal principle of construction that every statute is *prima*

facie prospective unless it is expressly or by necessary implication made to have retrospective operation. But the rule in general is applicable. The amendment incorporated in Rule 8 of the Foreign Liquor Rule has been made applicable prospectively as per Clause No. 2 of the notification dated 11.07.2024. The amendment made after grant of licence cannot be made applicable retrospectively. The order dated 01.07.2024, directions dated 04.07.2024 and the NIT dated 11.07.2024 are illegal, arbitrary and contrary to law.

7. Mr. Paranjpe submits that the FL-10 licence granted to the petitioner company under the Rules which were in existence in the month of March 2024 cannot be cancelled unilaterally. The amendment made on 11.07.2024 cannot be made applicable retrospectively. Even Clause No. 2 of the amendment, specifically provides that, it would be made applicable from the date of the issuance of the notification i.e. 11.07.2024. Under the new amended rules, the licence FL-10(A) has been deleted, but all the contracts which were awarded under the Rules, which were in existence in the month of March 2024 cannot be cancelled. The licence granted under FL-10(A) is still in existence and it cannot be cancelled. By change of policy decision, the FL-10(A) licence cannot be cancelled automatically. The respondent authorities are bound by the contractual obligations.
8. Mr. Paranjpe fairly submits that though Section 32 of the Chhattisgarh Excise Act, 1915 provides for withdrawal of licence, but all of a sudden the entire system has been changed which will cause huge financial loss to the petitioner and as such, the petitioner should have been permitted to operate till the period for which the licence was granted i.e. 31.03.2025. In support of his contentions, he relies on the decision of the

Supreme Court in ***Assistant Excise Commissioner, Kottayam & Others v. Esthappan Cherian & Another*** {(2021) 10 SCC 210, paragraphs 13, 16, 17 and 22} and a Division Bench decision of this High Court in ***Hardeep Singh Benipal v. State of Chhattisgarh & Others*** {2023 SCC OnLine Chh 3684, paragraphs 23 to 27, 37, 38 and 40}.

9. On the other hand, Mr. Prafull N. Bharat, learned Advocate General appearing for the State/respondents No. 1 and 2 submits that earlier scheme was that a licence was granted to the petitioner and the petitioner Company was purchasing liquor from the manufacturers and after adding certain commission, it was being sold to the State Government. In order to remove the middleman, the State Government not intends to purchase the liquor directly from the manufacturer which the State Government can do. In support of his contentions, he relies on the decision of the Supreme Court in ***Khoday Distilleries Ltd. & Others v. State of Karnataka & Others*** {(1995) 1 SCC 574} as well as ***Kerala Bar Hotels Association & Another v. State of Kerala & Others*** {(2015) 16SCC 421}. The petitioner can only claim compensation and nothing else. He cannot claim that he should be permitted to continue upto 31.03.2025. The State has precluded everyone and it is not the case that the petitioner company has been singled out. Now the entire sale and supply of the liquor would be controlled by the State Government and there would be no middleman which would save the State exchequer.
10. Mr. Bharat further submits that earlier 10 Companies were granted licence. The State has issued notice to all these 10 Companies and it has offered to refund 50% of the licence fee and to take the remaining

stock from them and the State Government shall refund the value of the stock deposited by those Companies. In pursuance of the same, 8 Companies have agreed and deposited their stock with the Government.

11. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
12. From perusal of the pleadings and the submissions advanced by the learned counsel for the petitioner, it transpires that the grievance of the petitioner is that earlier he was granted licence FL-10(A) licence and had entered into a rate contract with the CSMCL for supply of IMFL and FMFL for the period from 01.04.2024 to 31.03.2025. The State Government, vide notification dated 11.07.2024 (Annexure P/11) has amended the Rule 8 of the Rules, 1996 and FL-10(A) and FL-10(B) has been deleted and a decision has been taken that the CSBC will directly purchase the IMFL and FMFL from the registered Companies. Vide letter dated 01.07.2024, the petitioner has been informed that the old policy has been withdrawn and as such, the contract for supply has been cancelled.
13. Section 32 of the Act of 1915 provides for power to withdraw licence. The same reads as under:

“32. Power to withdraw licences – (1) Whenever the authority which granted any licence under this Act considers that such licence should be withdrawn for any cause other than those specified in Section 31, it shall remit a sum equal to the amount of the fee payable in respect thereof for fifteen days and may withdraw the licence either -

(a) on the expiration of fifteen days’ notice in writing of its intention so to do; or

(b) forthwith without notice.

(2) if any licence be withdrawn under clause (b) of sub-section (1) the aforesaid authority shall in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any) by way of compensation as the Excise Commissioner may direct.”

14. The reliance placed by the petitioner on the decision of the Supreme Court in ***Esthappan Cherian & another*** (surpa) and a decision of the Division Bench of this Court in ***Hardeep Singh Benipal*** (supra), are not relevant for these petitions and are distinguishable on facts.
15. In ***Kerala Bar Hotels Association & Another*** (supra), which takes note of the decision in ***Khoday Distilleries Ltd. & Others*** (supra), the Apex Court observed as under:

“30. The next ground for challenge has been under Article 19. The learned Senior Counsel for the Appellants, Mr. Aryaman Sundaram, has sought to argue that a right under Article 19(1)(g) exists in the business of liquor. In his detailed elucidation of the decision in Khoday, he has contended that the State is given three options. The first is prohibition, the second is a State monopoly in manufacture or trade or both in potable liquor, and the third, which is similar to the case at hand, is that the State allows private individuals into this business, in which event everyone would have a right to partake in it. Reliance was placed on the following paragraphs of Khoday (SCC pp. 606-07, paras 55-56):

55. The contention that if a citizen has no fundamental right to carry on trade or business in potable liquor, the State is also enjoined from carrying on such trade, particularly in view of the provisions of Article 47, though apparently attractive, is fallacious. The State’s power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others. Prohibition is

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

56. The contention further that till prohibition is introduced, a citizen has a fundamental right to carry on trade or business in potable liquor has also no merit. All that the citizen can claim in such a situation is an equal right to carry on trade or business in potable liquor as against the other citizens. He cannot claim equal right to carry on the business against the State when the State reserves to itself the exclusive right to carry on such trade or business. When the State neither prohibits nor monopolises the said business, the citizens cannot be discriminated against while granting licenses to carry on such business. But the said equal right cannot be elevated to the status of a fundamental right.

31. Khoday also held that all rights under Article 19(1) of the Constitution are not absolute, as they are qualified by the respective clauses (2) to (6) of Article 19. Business in liquor is further regulated by the rigours of Article 47. However, the categorization of dealing in liquor as a "qualified fundamental right" cannot be interpreted to indicate that a right under Article 19(1)(g) does not arise. This is in line with the

previous Five-Judge bench decision in Krishan Kumar Narula, which, as we previously discussed, returned the opinion that a citizen can have a right to deal in liquor, subject to reasonable restrictions in the public interest. Thus since Five Star hotels are given a right to deal in liquor, all other categories of hotels can claim on the grounds of Article 19(1)(g), subject to the reasonable restrictions allowed by Article 19(6). It has been contended that the restrictions imposed herein are not reasonable, for various reasons, including that the relevant material has not been considered so the restriction was arbitrary and unreasoned. The Division Bench, while overturning the finding of the Single Judge that the relevant materials were not considered, held that “we cannot assume that the Government did not consider the report at all.” The Appellants contend that an assumption that the materials were considered merely because nothing on the record definitively says that they were not is erroneous.”

16. From the above, it is clear that the the State’s power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others. As such, the act of the respondent authorities cannot be said to be illegal or arbitrary. Further, as submitted by learned Advocate General that the State is ready to refund 50% of the licence fee and to take the remaining stock available with the petitioner and the State Government shall refund the value of the stock which at present the petitioner is having, the petitioner cannot have any grievance and as such, we do not find it a fit case for interference.
17. Resultantly, both these petitions are **dismissed**. No order as to cost.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

One cannot claim equal right to carry on the business against the State when the State reserves to itself the exclusive right to carry on such trade or business.