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W.P. Nos. 12168/2019, 5818/2019, 8912/2019, 8610/2019,
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3541/2019, 3503/2019, 3382/2019, 3296/2019, 2780/2019,
2468/2019, 10068/2019, 9983/2019 , 9767/2019 , 9670/2019

Gwalior, Dated :03/12/2019

Shri Vinod Bhardwaj Senior Advocate with Shri Kartik Sharma
and Shri S.K. Shrivastava, Counsel for the petitioners.

Shri R.K. Soni, Government Advocate for the State.

Heard Finally.

2. By this Common Order, W.P. Nos. 12168/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 5818/2019 (Ms. Som Distilleries Pvt. Ltd. vs. State of M.P. & Ors.), 8912/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 8610/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 8469/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 9490/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 9466/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 9417/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 9097/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 8995/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 5817/2019 (Ms. Som Distilleries Pvt. Ltd. vs. State of M.P. & Ors.), 4594/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 4095/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 3665/2019 (Gwalior Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.), 3541/2019 (Gwalior

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Alcobrew Pvt. Ltd. vs. State of M.P. & Ors.) shall be decided.

3. For the sake of convenience, the facts of W.P. No. 12168 of 2019 shall be taken into consideration.

4. The present petition has been filed against the order dated 2-1-2019 passed by Board of Revenue in Appeal No. 6525/2018/Gwalior/Ex.A, thereby affirming the order dated 12-11-2018 passed by Excise Commissioner, Gwalior in case No. 5(1)2018-9/7183, by which the penalty of Rs. 1,51,250/- has been imposed for not maintaining atleast 25% of minimum stock in glass bottles during the year 2017-2018.

5. According to the petitioner, it is a Private Limited Company

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registered under the provisions of Companies Act, 1956 and is engaged inter alia in the manufacture of rectified spirit and extra neutral alcohol. The petitioner has its distillery at Gwalior. Apart from manufacturing and bottling its own brands, the petitioner is also engaged in business of bottling brands for other alcohol manufacturers.

6. It is the case of the petitioner that it had applied for and was granted various licenses i.e., C.S.-1, D-1, F.L.9 and F.L.9A by respondent no.2 and accordingly the petitioner has been granted permission to undertake the activity of manufacturing and bottling of Indian Made Foreign Liquor (IMFL) and Country Spirit at its distillery. The petitioner has also been permitted to sell/transfer the IMFL and Country Spirit from its unit to storage warehouses and other destinations within the State of Madhya Pradesh as well as outside the State.

7. The respondent no.1 issued a Tender Notice for the supply of country spirit in sealed bottles in 51 Districts (Supply areas) of Madhya Pradesh. Sealed Tenders were invited from distillers of Madhya Pradesh for the grant of licence(s) under the provisions of the Madhya Pradesh Country Spirit Rules, 1995 (In short Rules,

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1995) to supply country spirit through bonded storage warehouses to the retail sale contractors in sealed bottles for a period commencing 1st April 2017 and ending 31st March 2018.

8. The petitioner also participated and was declared successful and accordingly it was granted license and the petitioner was regularly supplying bottled country spirit. It is the claim of the petitioner, that there was no instances of non-supply of Country spirit. It is claimed that owing to the demand in the market, the supplies and consequently the stock was largely maintained in PET bottles. Since, the demand of glass bottles was nill in the market, therefore, Country spirit was filled only in PET bottles. However, a show cause notice dated 24-9-2018 was issued mentioning therein, that since for the period between April 2017 to March 2018, 25% of day's average issue in glass bottles from the warehouse was not kept in **glass bottles**, therefore, the present petitioner is liable to penalty under Condition 6(xxxi) of Tender Notice read with Rule 4(4)(a) and Rule 12 of M.P. Country Spirit Rules, 1995.

9. The petitioner submitted its reply and submitted that previously 100% supply was done in glass bottles, however, with the permission of the State Govt., the supply is also made in PET bottles.

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Since, the demand was of PET bottles, therefore, the minimum stock was maintained in PET bottles so that the supply may not be discontinued. No loss was ever caused to the State Govt. It is alleged that the Commissioner, Excise, did not consider the reply filed by the petitioner, in its true perspective, and by order dated 12-11-2018 (Annexure P/1) imposed a penalty of Rs. 1,51,250/-.

10. The petitioner being aggrieved by the order of the Excise Commissioner, filed an appeal which was registered as Appeal 6525/2018/Gwalior/Aa.A. The Board of Revenue, by order dated 2-01-2019 has dismissed the appeal, accordingly, the present petition has been filed.

11. Challenging the order passed by the Commissioner, Excise, as well as the Board of Revenue, it is submitted by the Counsel for the petitioner, that the penalty can be imposed for violation of the Rules. There is no allegation, that the petitioner did not maintain the minimum stock as required under Rule 4(4) of Rules, 1995. But the only allegation is that the minimum stock was not kept in **glass bottles** but was kept in **PET bottles**. The Rules, 1995 do not provide that the Country spirit cannot be kept in PET bottles. The conditions of Tender, cannot be equated with Statue but they are contract only.

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Further in the Tender Notice or under the Rules, 1995, the breach of Tender condition has not been made an offence. Further, the Appellate Court has not considered the grounds which were raised in the memo of appeal. Further, the respondents did not issue notice during the currency of the contract, otherwise, the petitioner could have rectified the mistake. It is further submitted that the show cause notice was issued only after the conclusion of contract and accordingly, no penalty can be imposed for breach of concluded contract. It is further submitted that the Excise Commissioner, while passing the order dated 12-11-2018 has nowhere stated that the penalty is being imposed for violating the terms of contract, and now the respondents cannot substitute its own findings. To buttress his contentions, the Counsel for the petitioners, relied upon the judgment passed by the Supreme Court in the case of **Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.** reported in AIR 1978 SC 851, **Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.** reported in (2010) 9 SCC 496, **Central Homeopathic & Biochemic Association, Gwalior & Ors. vs. State of M.P. & Ors.** reported in ILR 2013 MP 837, **M/s. Hindustan Steel Ltd. vs. State of Orissa** reported in AIR 1970 SC

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253, Rattan Bai & Anr. vs. Ram Das & Ors. reported in **2012(3) SCC 248, Rattan Bai & Anr. vs. Ram Das & Ors.** reported in **2012(3) SCC 248, Union of India vs. Rampur Distillery & Chemical Co. Ltd.** reported in **AIR 1973 SC 1098, Maula Bux vs. Union of India** reported in **AIR 1970 SC 1955, Ujjain Charitable Trust Hospital and Research Centre vs. State of M.P. & Anr.** reported in **2010 (3) MPLJ 29.**

12. *Per contra*, it is submitted by the Counsel for the respondents that the petitioner was granted C.S.-1 License for the financial year 2017-2018 where in the terms and conditions of the C.S.-1 license itself, it was mentioned as under :

1. *This license is granted under and shall be subject to the provisions of the Madhya Pradesh Excise Act, 1915 and the Rules made thereunder and shall also be subject to such subsidiary orders and instructions, as the Excise Commissioner, Madhya Pradesh, may from time to time issue in this behalf.*
2. *During the period of license shall observe all the conditions of the tender notice.*
3. *The licensee will use only such essences and food colours for the preparation of any kind of country liquor as are approved by the Excise Commissioner.*
4. *On breach of any of the conditions of t his license or the provisions of the Madhya Pradesh excise Act or of the rules made thereunder, this license may be cancelled by the Excise Commissioner.*

13. It is further submitted that in exercise of powers conferred by

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sub-section (1) and clauses (d) and (h) of sub-section (2) of Section 62 of the Madhya Pradesh Excise Act, 1915, the State Govt. has made rules called as “Madhya Pradesh Country Spirit Rules, 1995”. Rule 11 of Rules, 1995 prescribe that the licensee shall be bound by General or Special Orders which may be issued by the Excise Commissioner from time to time. It is further submitted that the Penalty as provided under Rule 12 of the Rules, 1995 is not for any loss sustained by the State Govt, but it is a deterrent measure, so that the stipulations in the rules and the terms of license, including maintaining minimum stock as prescribed by the authority is adhere to. It is further submitted that trade in liquor is not the fundamental right but it is a privilege and the petitioner must fulfill the terms and conditions of license. It is further submitted that clause 6(v) of the Tender notice dated 9-1-2017 clearly provided that the Successful tenderer will have to supply maximum 50% of the total supply of District in glass bottles as demand by the Assistant Commissioner Excise/District Excise Officer of the District.

14. Heard the learned Counsel for the parties.

15. Clause 6(xxxi) of the Tender Notice dated 19-1-2017 published in the Official Gazette (Extraordinary) reads as under:

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6(xxxi) The Successful tendere will have to always maintain at least 25% stock of one day's average issue in glass bottles in every storage warehouse.

16. It is the case of the respondents that the petitioner did not follow the above mentioned condition and thus is liable to pay penalty as per Rule 12 of the Rules, 1995.

17. It is well established principle of law that trade in liquor is merely a privilege and not a fundamental right. The Supreme Court in the case of **State of Punjab Vs. Devans Modern Breweries Limited**, reported in (2004) 11 SCC 26 has held as under :

"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.* and *Panna Lal v. State of Rajasthan*. 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

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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*, *Har Shankar case*, *Sat Pal and Co. v. Lt. Governor of Delhi* and *Khoday case*. 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."

The Supreme Court in the case of **Synthetics and Chemicals Ltd. Vs. State of U.P.** reported in (1990) 1 SCC 109 has held as under :

"105. The basis of the privilege doctrine appears to be that alcoholic drinks or intoxicating drinks are expected to be injurious to health and therefore the trade in these commodities is described as obnoxious and therefore a citizen has no fundamental right under Article 19(1)(g) of the Constitution and therefore the trade in alcoholic drinks which is expected to be injurious to health and obnoxious is the privilege of the State alone and the State can part with this privilege on receipt of the consideration."

The Supreme Court in the case of **Khoday Distilleries Ltd. Vs. State of Karnataka** 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

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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

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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

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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

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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."

The Supreme Court in the case of **State of Kerala Vs.**

Kandath Distilleries reported in **(2013) 6 SCC 573** has held as

under :

"24. Article 47 is one of the directive principles of State policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. The State has, therefore, the exclusive right or privilege in respect of potable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are *res extra commercium*, cannot be carried on by any citizen and the State can prohibit completely trade or business in potable liquor and the State can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. The State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles

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which are *res commercium*. Reference may be made to the judgments of this Court in *Vithal Dattatraya Kulkarni v. Shamrao Tukaram Power*, *P.N. Kaushal v. Union of India*, *Krishan Kumar Narula v. State of J&K*, *Nashirwar v. State of M.P.*, *State of A.P. v. McDowell & Co.* and *Khoday Distilleries Ltd. v. State of Karnataka*."

18. Thus, it is clear that where the petitioner is well aware of the provisions of law governing and regulating the business of liquor or was aware of the terms of auction/tender notice, then the bidder cannot wriggle out of the contractual obligations.

19. The Supreme Court in the case of **State of Haryana v. Lal Chand**, reported in (1984) 3 SCC 634, has held as under :

"8. In *Har Shanker v. Deputy Excise and Taxation Commissioner* this Court held that the writ jurisdiction of the High Courts under Article 226 was not intended to facilitate avoidance of obligations voluntarily incurred. It was observed that one of the important purposes of selling the exclusive right to vend liquor in wholesale or retail is to raise revenue. The licence fee was a price for acquiring such privilege. One who makes a bid for the grant of such privilege with a full knowledge of the terms and conditions attaching to the auction cannot be permitted to wriggle out of the contractual obligations arising out of the acceptance of his bid. Chandrachud, J. (as he then was) interpreting the provisions of the Punjab Excise Act, 1914 and of the Punjab Liquor Licence Rules, 1956 said: (SCC pp. 745-46, para 16)

"The announcement of conditions governing the

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auctions was in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by the prospective vendors to the Government. The Government's acceptance of those bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. . . . The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force."

To the same effect are the decisions of this Court in *State of Haryana v. Jage Ram* and the *State of Punjab v. Dial Chand Gian Chand & Co.* laying down that persons who offer their bids at an auction to vend country liquor with full knowledge of the terms and conditions attaching thereto, cannot be permitted to wriggle out of the contractual obligations arising out of the acceptance of their bids by a petition under Article 226 of the Constitution."

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

"139. In the case of *State of Haryana v. Lal*

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Chand this Court held that after making bid for grant of exclusive privilege of liquor vend with full knowledge of terms and conditions of auction, the bidder cannot wriggle out of the contractual obligations arising out of acceptance of his bid by filing writ petition.

140. In the case of *State of Punjab v. Dial Chand Gian Chand and Co.* this Court held that a licensee who participates in the auction voluntarily and with full knowledge is bound by the bargain and the writ petition filed under Article 226 by such licensee in an attempt to dictate terms of the licence without paying the licence fee must fail. The highest bidder after acceptance of his bid cannot challenge the second auction on the ground of adverse effect on his business."

20. Thus, it is clear that when the petitioner had participated in an auction and had obtained license to supply country liquor, then he cannot avoid either the provisions regulating the trade in liquor or cannot avoid the terms and conditions of license or auction/tender notice, or general or special order.

21. It is contended by the Counsel for the petitioner, that the Rules, 1995 does not exclusively provide for glass bottles, therefore, any violation of terms of Tender Notice would not be covered under Rule 4(4) of Rules, 1995 and thus, no penalty can be imposed under Rule 12 of Rules, 1995.

22. Considered the submission made by the Counsel for the

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Petitioner.

23. Rule 11 of Rules, 1995 reads as under :

11. The licensee shall be bound by general or special orders which may be issued by the Excise Commissioner from time to time.

24. The Tender Notice dated 19-1-2017 was issued by the Excise Commissioner and every condition mentioned in the Tender Notice can be termed as general or special order issued by the Excise Commissioner. Thus, any condition mentioned in the Tender Notice shall be an integral part of contract granted under Rules, 1995 and by virtue of Rule 11 of the Rules, the Excise Commissioner, can always issue general or special orders and the same shall be binding on the licensee as if the said general or special order is an integral part of rules. It is well established principle of law that where the Statute or Rules are silent, then the Executive Instructions can be issued to supplement the Rules and not supplant it.

25. The Supreme Court in the case of **Union of India v. Ashok Kumar Aggarwal**, reported in (2013) 16 SCC 147 has held as under :

59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office

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memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide *Union of India v. Majji Jangamayya*, *P.D. Aggarwal v. State of U.P.*, *Paluru Ramkrishnaiah v. Union of India*, *C. Rangaswamaiah v. Karnataka Lokayukta* and *Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation*.)

60. Similarly, a Constitution Bench of this Court, in *Naga People's Movement of Human Rights v. Union of India*, held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.

61. In *Nagaraj Shivarao Karjagi v. Syndicate Bank* this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department, particularly the recommendations made by CVC.

62. In *State of U.P. v. Dharmander Prasad Singh* this Court held that the order must be passed by the authority after due application of mind uninfluenced by and without surrendering to the dictates of an extraneous body or an authority.

26. It is not the case of the Petitioner that Clause 6(xxxi) of the Tender Notice is contrary to the provisions of Rules, 1995. Whereas Rules, 1995 clearly provides that the liquor can be bottled in Glass or PET bottles. Thus, the Tender Condition No. 6(xxxi) cannot be said to be violative of any provision of Rules, 1995. Thus, the Excise

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Commissioner, can impose a restriction of maintaining the 25% of the minimum stock in glass bottles.

27. The petitioner has not disputed that it had not maintained at least 25% of the minimum stock in glass bottles.

28. Thus, it is clear that the Petitioner has not followed the Tender Condition No. 6(xxxi) and therefore, violated Rule 4(4) of the Rules.

29. It is next contended by the Counsel for the petitioner, that since, there was no demand of glass bottles, therefore, the entire minimum stock of country spirit was kept in PET bottles. It is well established principle of law that trade in liquor is not a fundamental right under Article 19 of the Constitution of India, but it is a privilege, and therefore, the petitioner was under obligation to follow the license condition, tender condition, general or special order issued by Excise Commissioner from time to time as well as the provisions of Excise Act and Rules, 1995.

30. Rule 4(4) of Spirit Rules, 1995 reads as under :

"4 Manufacture and Bottling : (1).....

(2).....

(3).....

(4) (a) The licensee shall maintain at each "bottling unit" a minimum stock of **bottled liquor** and rectified spirit equivalent to average issues of five and seven days respectively of the preceding month. In addition, he

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shall maintain at each “storage warehouse” a minimum stock of bottled liquor equivalent to average issue of five days of the preceding month ;

Provided that in special circumstances, the Excise Commissioner may reduce the above requirement of maintenance of minimum stock of rectified spirit and/or sealed bottles in respect of any “bottling unit” or “storage warehouse”.

- (5).....
- (6).....
- (7).....
- (8).....
- (9).....
- (10).....
- (11).....
- (12).....
- (13).....
- (14).....
- (15).....

31. In Rule 4(4) of Rules, 1995, the word “bottled liquor” has been mentioned, therefore, it is silent as to whether the bottled liquor should be in PET bottles or Glass bottles. Under these circumstances, the Excise Commissioner, by general or special order can supplement the rules, and as the Tender Notice Condition No. 6(xxxi) can be imposed, therefore, the Tender Notice condition No. 6(xxxi) would supplement the Rule 4(4) of the Rules.

32. In view of Rule 11 of Rules, 1995, violation of tender notice shall be violation of Rule 4(4) of Rules.

33. It is next contended by the Counsel for the Petitioner that the

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Excise Commissioner cannot travel beyond his order dated 12-11-2018 (Annexure P/2) and since, he has not assigned any reason and has merely stated that non-maintaining atleast 25% of minimum stock in glass bottles would amount to violation of Rule 4(4) of the Rules, but has not held that it is violative of Tender Condition Notice therefore, the said order is bad.

34. This Court has already considered the question that whether the Tender Notice Condition No. 6(xxxi) can supplement the Rule 4(4) of the Rules 1995 or not and therefore, it is held that violation of Tender Notice Condition No. 6(xxxxi) would amount to violation of Rule 4(4) of Rules and thus, it is held that the order passed by the Excise Commissioner, is not bad in law.

35. It is next contended by the Counsel for the petitioner, that the Board of Revenue, while deciding the appeal filed by the petitioner has not considered all the grounds raised by the petitioner, therefore, the order dated 2-1-2019 passed by Board of Revenue in appeal (Annexure P/1) is bad.

36. Considered the submission.

37. This Court has already considered the question that whether violation of condition of Tender Notice would amount to violation of

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Rules 1995 or not, therefore, this Court is of the considered opinion, that no fault can be found in the order dated 2-1-2019 passed by Board of Revenue.

38. It is next contended by the Counsel for the Petitioner, that Condition 6(v) of Tender Notice Conditions permit use of PET bottle also therefore, the petitioner cannot be penalized for not maintaining at least 25% of the minimum stock in glass bottles.

39. Considered the submission.

40. Clause 6(v) of Tender Notice Condition reads as under :

6(v). The Country spirit shall be bottled in glass and pet bottles of 750 milliliters, 375 milliliters and 180 milliliters. The successful bidder tenderer will have to supply country spirit in glass and pet bottles as per demand of retail license which shall be determined by the Assistant Excise Commissioner/District Excise Officer of the District.....

41. The Tender Condition 6(v) cannot be read along with Rule 4(4) of the Rules. This deals with general supply whereas Rule 4(4) of the Rules, 1995 deals with maintaining the minimum supply. Further, as per Rule 4(4) of the Rules, 1995, at least 25% of the minimum stock is to be maintained in glass bottles. Thus, the above mentioned submission made by the Counsel for the petitioner is rejected as

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misconceived.

42. It is next contended by the Counsel for the petitioner, that breach of tender condition has not been made an offence, therefore, no penalty can be imposed.

43. Considered the submission.

44. This Court in the case of **M/s Som Distilleries Pvt. Ltd. vs. Excise Commissioner & Ors.** by order dated **30-11-2018** passed in **W.P. No. 60 of 2016** has held as under :

As per the provisions of Rule 4(4) of Spirit Rules, 1995, the licensee is under obligation to maintain the minimum stock of bottled liquor equivalent to average issues of five days of the preceding month. The basic purpose of maintaining the minimum stock of spirit in the storage warehouse is to supply the spirit in case of additional demand. Thus, for maintaining the balance between the demand and supply, the licensee is required to maintain the minimum stock in the storage warehouse, so that in case of non-supply of liquor to meet the higher demand of spirit/liquor, the spurious spirit is not sold in the market. Thus, the basic purpose of maintaining the minimum stock in the storage warehouse is to deal with every/urgent situation and that is why, no fixed minimum quantity has been prescribed under the Rules, but it fluctuates in accordance with the average issues of five dates of the preceding month. My view is fortified by the judgment passed by the **Delhi High Court in the case of Union of India Vs. Central Distillery and Breweries Ltd.** reported

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in (2002) 98 DLT 275 which reads as under :

"33. The purpose for which the minimum stock is required to be kept is not in dispute i.e., to avoid use of spurious liquor. The purpose and object to make such rules is thus in public interest."

Thus, the maintenance of minimum stock in the storage warehouse equivalent to average issues of five days of the preceding month is mandatory and the petitioner cannot get away from the liability of maintaining minimum stock in the storage warehouse, on the ground that non-maintenance of minimum stock had not effected the State adversely.

* * * *

From the plain reading of Rule 12 of Spirit Rules, 1995, it is crystal clear that the penalty is imposable on breach or contravention of any of these rules or the provisions of M.P. Excise Act. Thus, it is clear that penalty under Rule 12 of Spirit Rules, 1995 is not imposed for the loss sustained by the State.

* * * *

As it is evident from Rule 12 of Spirit Rules, 1995, that the penalty is imposed for contravention or breach of any of the Rule and not by way of punishment for committing any offence, therefore, mens rea or actual loss to the other party of the contract are not necessary. Where a provision, which is in public interest, has been made, then for its better enforcement, if the penalty is provided, then it is within the legislative competence and mens rea is not necessary. Mere contravention or Breach of any of the Rule is sufficient to invite the imposition of Penalty. As already held that the petitioner himself has admitted that there was a lapse on the

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part of the petitioner, in maintaining the minimum stock of spirit in the storage spirit. Thus, where contravention or breach of any rule has been established, then the authorities are well within their right to impose the penalty for such contravention or breach.

45. Thus, it is clear that the penalty is not imposed by way of punishment for committing any offence, but it is imposed for better enforcement of the provisions of law.

46. It is next contended by the Counsel for the petitioner, that the respondents should have pointed out the mistake during the currency of the contract, so that the petitioner could have rectified the same, but the imposition of the penalty after the contract has concluded is bad.

47. Considered the submission.

48. As already pointed out that the trade in liquor is not a fundamental right and is merely a privilege, and the petitioner must follow each and every provision of law. The Tender Notice condition No. 6(xxxi) was very clear and the petitioner was aware of the same from day one. It is the duty of the petitioner to follow each and every condition of tender notice, and the respondents were not under obligation to apprise the petitioner about his default. Since, the

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petitioner has not disputed that he had not maintained 25% of the minimum stock in glass bottles, therefore, the petitioner cannot get away from his liability of making payment of Penalty on the ground that he was not apprised of his mistakes during the currency of the contract.

49. No other argument was advanced by the counsel for the petitioner.

50. Accordingly, this Court is of the considered opinion, that the Excise Commissioner as well as the Board of Revenue did not commit any mistake by holding that non-maintenance of atleast 25% of the minimum stock in glass bottles, amount to violation of Rule 4(4) of Rules, 1995, therefore, have rightly imposed the penalty under Rule 12 of Rules, 1995. The interim orders are hereby vacated.

51. Resultantly, this petitions fail and are hereby **dismissed**.

Arun*

(G.S. Ahluwalia)
Judge