

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

WRIT PETITION No. 19121 of 2020

BETWEEN:-

**M/S M.P. BEER PRODUCTS LIMITED THROUGH
ITS AUTHORIZED SIGATORY SHRI BVK ROHII
BABU S/O SHRI SURYANARAYAN MURTHY,
AGED ABOUT 71 YEARS, PLOT NO. 62/63/64,
SECTOR, SANWER ROAD, (MADHYA PRADESH)**

....PETITIONER

**(BY SHRI SUMEET NEEMA – SENIOR ADVOCATE WITH SHRI PIYUSH
PARASHAR - ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH AND
OTHERS THROUGH PRINCIPAL
SECRETARY DEPARTMENT OF EXCISE
MANTRALAYA, VALLABH BHAWAN
(MADHYA PRADESH)**
- 2. EXCISE COMMISSIONER DEPARTMENT
OF EXICE MOTI MAHAL, LASHKAR,
GWALIOR (MADHYA PRADESH)**
- 3. OFFICER IN CHARGE (EXCISE) (FOR M.P.
BEER PRODUCTS LIMITED)
DEPARTMENT OF EXISE
ADMINISTRATIVE COMPLEX /
COLLECTORATE , INDORE (MADHYA
PRADESH)**
- 4. DEPUTY COMMISIONER (FLYING SQUAD)
DEPARTMENT OF EXCISE
ADMINISTRATIVE COMPLEX /
COLLECTORATE , MOTI TABELA ,**

INDORE (MADHYA PRADESH)

5. **M/S MOUNT EVEREST BREWERIES LIMITED 4TH FLOOR, BPK STAR TOWER, ABOVE SHOPPER SHOP (MADHYA PRADESH)**
6. **M/S UNITED BREWERIES LTD. REGD. OFFICE AT UB TOWER, UB CITY, VITHAL MALLYA ROAD, BANGLORE KARNATAKA AND MANUFACTURING UNIT AT VILLAE MEMDI TEHSIL MHOW INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VAIBHAV BHAGWAT – G.A. FOR STATE AND SHRI PIYUSH MATHUR – SENIOR ADVOCATE WITH SHRI AMIT DUBEY – ADVOCATE FOR RESPONDENT NOS.5 AND 6)

WRIT PETITION No. 19219 of 2020**BETWEEN:-**

M/S REGENT BEERS AND WINES LIMITED THROUGH ITS AUTHORIZED SIGNATORY SHRI GOPAL SINGH YADAV S/O SHRI HARI SINGH YADAV REGISTERED OFFICE: 5TH FLOOR, PRINCESS BUSINESS SKY PARK, SCHEME NO. 54 PU-3 COMMERCIAL VIJAY NAGAR, INDORE PLANT AT PLOT NO. 68, INDUSTRIAL AREA MAKSI, DIST SHAJAPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V. K. JAIN – SENIOR ADVOCATE WITH SHRI NAMIT JAIN - ADVOCATE)

AND

1. **DEPARTMENT OF EXCISE THROUGH ITS PRINCIPAL SECRETARY MANTRALAYA, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **EXCISE COMMISSIONER EXCISE
COMMISSIONER MOTI MAHAL ,
LASHKAR, GWALIOR (MADHYA
PRADESH)**
3. **OFFICER IN CHARGE(EXCISE)(FOR
REGENT BEERS AND WINES LIMITED)
DEPARTMENT OF EXCISE MAKSI
DISTRICT COLLECTORATE SHAJAPUR
(MADHYA PRADESH)**
4. **M/S MOUNT EVEREST BREWERIES
LIMITED 4TH FLOOR, BPK STAR TOWER,
ABOVE SHOPPERS STOP, A.B. ROAD
INDORE (MADHYA PRADESH)**
5. **M/S UNITED BREWERIES LIMITED
REGISTERED OFFICE AT UB TOWER, MB
CITY, VITTHALMALLYA ROAD,
BANGALORE, KARNATAKA AND
MANUFACTURING UNIT AT VILLAGE
MEMDI, TEH. MHOW INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI BY SHRI VAIBHAV BHAGWAT – G.A. FOR STATE AND SHRI
PIYUSH MATHUR – SENIOR ADVOCATE WITH SHRI AMIT DUBEY –
ADVOCATE FOR RESPONDENT NOS.4 AND 5)***

WRIT PETITION No. 3902 of 2021

BETWEEN:-

**SOM DISTILLERIES AND BREWERIES LIMITED
THRO. ITS AUTHORIZED SIGNATORY SUBHASH
PANDEY A/A 44 YRS S/O SHRI BHOLA PRASAD
PANDEY A CPMANY REGISTRERED UNDER
THE INDIAN COMPANIES ACT HAVING ITS
OFFICE AT 23 ZONE II M.P. NAGAR BHOPAL C-4
KOUSHALYA COSMO CITY NEAR GORAKHPUR
P.S. JABALPUR (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI SUMEET NEEMA – SENIOR ADVOCATE WITH SHRI PIYUSH
PARASHAR - ADVOCATE)***

AND

1. THE STATE OF MADHYA PRADESH THRO. THE PRINCIPAL SECRETARY GOVT. OF MADHYA PRADESH COMMERCIAL TAX DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL MP (MADHYA PRADESH)
2. EXCISE COMMISSIONER STATE OF MADHYA PRADESH MOTI MAHAL GWALIOR (MADHYA PRADESH)
3. OFFICE INCHARGE EXCISE SOM DISTILLERIES AND BREWERIES LTD. RAJROCHAK DISTT.RAISEN (MADHYA PRADESH)
4. DEPUTY EXCISE COMMISSIONER BHOPAL ARERA COLONY BHOPAL (MADHYA PRADESH)
5. M/S MOUNT EVEREST BREWERIES LIMITED , 4TH FLOOR, BPK STAR TOWER, ABOVE SHOPPERS STOP,A.B. ROAD, INDORE (MADHYA PRADESH)
6. M/S UNITED BREWERIES LIMITED , REGISTERED OFFICE AT UB TOWER, UB CITY, VITTHAL MALLYA ROAD, BANGALORE, KARNATAKA, AND MANUFACTURING UNIT AT VILLAGE MEMDI, TEHSIL MHOW, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VAIBHAV BHAGWAT – G.A. FOR STATE AND SHRI PIYUSH MATHUR – SENIOR ADVOCATE WITH SHRI AMIT DUBEY – ADVOCATE FOR RESPONDENT NOS.5 AND 6)

.....
Reserved on : 13.02.2024

Pronounced on : 13.03.2024
.....

These petitions having been heard and reserved for orders, coming on for pronouncement this day, the Court passed the following:

ORDER

Counsel for the petitioner is directed to comply with the order passed by this Court on 08.03.2021 in W.P. No.3902 of 2021 and make necessary amendment during the day.

2] Heard finally, with the consent of the parties.

3] This order shall also govern the disposal of connected Writ Petition Nos.19219 of 2020 and 3902 of 2021 regard being had to the similitude of the issues involved. For the sake of convenience, the facts as narrated in W.P. No.19121 of 2020 are being taken into consideration.

4] This writ petition has been filed by the petitioner – M/s. M.P. Beer Products Limited under Article 226 of the Constitution of India against the order dated 07.11.2020, passed by the respondent No.2 Excise Commissioner, Department of Excise, Moti Mahal, Lashkar, Gwalior. The petition is also preferred against the notice dated 18.11.2020, passed by the respondent No.3 Officer-in-Charge (Excise Department), Indore to the petitioner.

5] Vide order dated 07.11.2020 the Commissioner Excise has decided the representation of the respondent No.5 M/s. Mount Everest Breweries Limited and had prohibited all liquor/ beer bottling units, including the petitioner, from using old glass bottles which carry an embossment on them, for the purposes of refilling and sale of liquor even under their own approved and registered labels/brands. It is also

directed to the petitioner that it should not scratch out the logo or the embossed logos/labels registered on the bottle of the other manufacturer of the beer for the purposes of filling its own beer. After the aforesaid order was passed, a notice dated 18.11.2020, was also issued by the Officer-in-Charge (Excise Department), Indore to M/s. M.P. Beer Products Limited to ensure the compliance of the aforesaid order dated 07.11.2020.

6] In brief, the facts of the case are that according to the petitioner, it is a high quality manufacturer of Beer having its factory at Plot No.68, Industrial Area, Maksi, District Shajapur, having all the necessary permissions from the competent authorities. The petitioner has also been granted approvals by the respondent No.2 Excise Commissioner regarding the labels/brands to be used by it for selling beer for the relevant period, and thus, the petitioner manufactures and sells beer under its own brands and labels, which have been duly approved by the respondent No.2.

7] The case of the petitioner company is that it has always complied with the procedure, rules and compliances, however, a dispute has arisen regarding the petitioner's following the long established common industrial practice of using empty beer bottles for bottling its products and labeling them with approved labels for the past many years, including the running years and after procuring the same from the market in large quantities, some of which are plain designed and while some of them carry some embossment which may be registered or not under the appropriate statutes, from the scrap vendors, and thereafter, after filling its own beer in those bottles, the

same are marketed by itself under its own brand. The case of the petitioner is that while marking the bottles, it affixes its big sized labels on the beer bottles so that it does not even confuse the ultimate end-consumer so that malpractice of someone else brand or trademark can be avoided. It is further the case of the petitioner that earlier a dispute had arisen between the petitioner and the other manufacturers of the bottles and the matter came up before this Court in W.P. No.7051 of 2020, which was decided on 10.07.2020, directing the Commissioner of Excise, M.P. to take appropriate decision on the pending representation of the petitioners therein viz., Mount Everest Breweries Limited and United Breweries Limited (respondent Nos.5 and 6 in the present petition), and in compliance with the aforesaid order, the impugned order has been passed as aforesaid on 07.11.2020.

8] Shri Sumeet Neema, learned Senior counsel for the petitioner has submitted that the respondent No.2, while passing the impugned order, has not adverted to any of the grounds raised by the petitioner in its reply to the representation submitted by the private respondents and the order itself is cryptic in nature and is liable to be set aside. Senior counsel has also submitted that even otherwise the Excise Commissioner had no jurisdiction to direct the petitioner to comply with the provisions of Trademarks Act, 1999, Copyrights Act, 1975 and Designs Act, 2000, who is not a competent authority to ensure the compliance of the aforesaid Acts regarding intellectual properties. In support of his submissions, learned senior counsel has drawn the attention of this Court to the various provisions of the Excise Act to submit that Excise Act is confined to the payment of the excise

revenue and its regulations does not deal with infringement of any intellectual property right. It is further submitted that nowhere in the Excise Act or the Rules made thereunder, there is any prohibition that the beer bottle of any other manufacturer cannot be used by any other company, which is engaged in manufacturing of beer under its own brand name and markets the same under the same brand name only.

9] Shri Neema has also submitted that if there is any infringement under the Trademarks Act, the proper course to a party is to file a suit for infringement under Section 134 of the Trademarks Act, 1999. Counsel has also submitted that Madhya Pradesh Beer and Wine Rules, 2000 also do not prohibit such practice, which is adopted by the petitioner, and other rules have also been referred to in support of his submissions. Thus, it is submitted that the impugned order be set aside.

10] On the other hand, Shri Piyush Mathur, learned senior counsel appearing for the respondent Nos.5 and 6 has vehemently opposed the prayer and it is submitted that no case for interference is made out as the Commissioner of Excise was well within its right to ensure the proper conduct of business by the petitioner/company, which has indulged in the malpractice of using the empty beer bottles of other manufacturers by putting its own label on the said beer bottles. Senior counsel has also tried to demonstrate the same by pictorial description of beer bottles of the respondents being used by the petitioner. It is submitted that the aforesaid act of the petitioner was a blatant infringement of intellectual property right (IPR) of other manufacturers, thereby violate the provisions of Trademarks Act,

1999, Copyrights Act, 1975 and Designs Act, 2000. Senior counsel has also submitted that such malpractice has been adopted by the petitioner across the India and whenever such fact is brought to the notice of the authorities, the petitioner does tenders its apology, however, does not stop from adopting the same malpractice in other parts of the country. The orders to this effect have also been placed on record. Senior counsel has also submitted that the provisions of Excise Act and the Rules made thereunder prohibits such malpractice on the part of any manufacturer and thus, it is submitted that the impugned order does not call for any interference as it has rightly been passed by the Excise Commissioner.

11] Counsel for the State has also opposed the prayer and it is submitted that no case for interference is made out.

12] Heard. On due consideration of submissions and on perusal of the documents filed on record, it is found that so far as the impugned order dated 07.11.2020 is concerned, the same reads as under :-

“कार्यालय आबकारी आयुक्तo, मध्यप्रदेशमोतीमहल, ग्वालियर

Email :- ecmpgwl@hotmail.com

आदेश

ग्वालियर दिनांक 07.11.2020

मेसर्स माउण्टा एवरेस्टw ब्रेवरीज लिमिटेड द्वारा उनकी टाईप वन प्रकार की बोतलों का उपयोग दूसरी बीयर विनिर्माता इकाईयों द्वारा गैर कानूनी रूप से उपयोग किये जाने के संबंध में माननीय उच्च न्यायालय खण्डेपीठ, इन्दौर में रिट पिटीशन क्रमांक 7051/2020 दायर की गई है। जिसमें माननीय उच्च न्यायालय, खण्ड/पीठइन्दौर द्वारा दिनांक 10.07.2020 को निम्नानुसार आदेश पारित किया गया है।

By this present petition the petitioners have challenged the inaction of the respondents to perform their duties of protecting the

statutory rights of the petitioners and take suitable criminal action against the violation of law under the code of criminal procedure so that statutory rights of the petitioners are protected. 2. The petitioner No.1 is one of the India's largest brewer and beverages manufacturer known for producing high quality and distinctive beverages. The petitioner No.2 is one of the world's largest brewer and beverages manufacturer having international recognition and presence in over 69 countries. The petitioner No.2 is undertaking manufacturing activities through the petitioner No.1 in central India. That, the petitioners are using design registered bottles and emboss all their beer bottles with their registered trademarks, artistic features having copyright, initial letters of petitioners' name, registered design number with other distinctive features. The such embossment also helps the petitioners in attaining their goal of sustainable development through recycling. That, the petitioners are facing the unlawful activities of illegal usage of their aforementioned bottles by various other breweries in central India and also by various others across the nation. The petitioners are facing a situation where the aforementioned bottles are siphoned off through the second hand bottle dealers and reaching directly to other beer manufacturers (infringers/offenders), thereby other beer manufacturers (infringers/offenders) are able to sell their products under the aforementioned bottles. Such unlawful activities has allowed a practice where beer bottle comprises of registered trademarks, artistic features, name initials and design of one manufacturer (petitioners), and simultaneously containing the product (beer) of another manufacturer (infringers/offenders), such unlawful activities of infringers/offenders tantamount to cognizable offences under the Trademarks Act, 1999 and the Copyrights Act, 1975 as well as infringement of the trademarks under the Trademarks Act, 1999, copyright under the Copyrights Act, 1975 and design under the Designs Act,2000. That, some of the infringers/offenders have also started a mechanism wherein the embossed marks were removed from the bottles by way of scratching/grinding actions making the bottles free from embossed marks but prone to easy damage/breakage and against the interest of consuming public, as the consumers are provided with the beer under such faulty bottles. Such acts seriously hamper the quality and durability of glass bottles, and resulting into the supply of faulty goods (packed in such faulty bottles) supplied to the common purchasing public, apart from huge losses to the petitioners and deign infringement. The trade in beer is absolutely controlled by state and same is strictly regulated and controlled by the respondents. The respondents are duty bound to curb any unlawful activities pertaining to beer manufacturing and distribution, and has wide powers to take *sou-moto* actions against infringers/offenders. The petitioners vide letter dated 10.12.2019 raised the concerns over such aforementioned activities before the

respondent No.2 and requested for enforcing appropriate mechanism to curb such unlawful activities. The petitioners after observing no reply from the respondent No.2, again requested and placed concerns vide letter dated 5.3.2020. The petitioners till date has not received any reply from the respondents and continuously facing in-actions on the part of the respondents. The respondents are not taking any action against such unlawful activities being committed right under the beer trade which is in absolute supervision/regulation/control of the respondents. The respondents by way of such allowance are facilitating such infringers/offenders and their business, causing the development of unlawful business/trade in infringed/false/scratched bottles in the State. That, the above actions of the respondents are unjust and inequitable, and causing utmost injustice to the petitioners.

3. Being aggrieved by the above inactions, learned Senior counsel for the petitioners has submitted that, the petitioners have already approached before the competent authorities by filing various representations, but no action has been taken in the matter. Therefore, the petitioners have filed the present petition against the inaction of the respondents.

4. Having regard to the aforesaid, without adverting to the merits of the case, the present writ petition is disposed of by directing the respondent No.2 to take an appropriate decision by passing a reasoned and cogent order in accordance to the law on the pending representations dated 10.12.2019 and 5.3.2020 (Annexure P/7 & P/8), if any, submitted by the petitioners within a period of sixty days from the date of receipt of the certified copy of this order.

5. With the aforesaid, the present petition stands disposed of.

माननीय न्यायालय द्वारा पारित उक्तानुसार आदेश के अनुक्रम में याचिकाकर्ता द्वारा प्रस्तुत अभ्याकवेदन दिनांक 10.12.2019 एवं 05.03 .2020 का अवलोकन किया गया। मध्यप्रदेश आबकारी अधिनियम , 1915 के अन्तर्गत निर्मित मध्यप्रदेश विदेशी मदिरा नियम 1996 के नियम 9 के तहत विदेशी मदिरा की बोटल पर लगाये जाने वाले लेबल पंजीयन/धारिता के प्रावधान है। विदेशी मदिरा (बीयर) के निर्माण हेतु प्रयुक्तह की जाने वाली बोटलों के आकार/प्रकार के निर्धारण हेतु उपरोक्तम नियम में कोई प्रावधान नहीं है। तदपि माननीय उच्च न्यायालय खण्डयपीठ इन्दौर द्वारा पारित आदेश के अनुक्रम में राज्य में स्थित समस्त विदेशी मदिरा (बीयर) विनिर्माणी इकाईयों को निम्नासनुसार निर्देशित किया जाता है:-

1. Trademarks Act, 1999/Copyrights Act, 1975/Designs Act, 2000, के

अंतर्गत रजिस्टर्ड बोटल/किसी विनिर्माणी इकाई द्वारा उपयोग में लायी जाने वाली काँच की बोटल जिस पर उसका लोगो उक्त अधिनियमों के अंतर्गत उत्कीर्ण/इम्बोस(Emboss) है, ऐसी काँच की बोटल का उपयोग किसी अन्य विनिर्माणी इकाई द्वारा अपने ब्राण्ड /लेबल की बीयर की भराई हेतु नहीं किया जाए।

2. ऐसी काँच की बोटल जो Trademarks Act, 1999/Copyrights Act, 1975/Designs Act, 2000, के अंतर्गत रजिस्टर्ड है अथवा काँच की बोटल पर उक्त अधिनियम के अंतर्गत विनिर्माणी इकाई का लोगो उत्कीर्ण/इम्बोस(Emboss) है, उसे मिटाकर या स्कीच कर विदेशी मदिरा (बीयर) की भराई हेतु उपयोग में नहीं लिया जाए। इस आदेश का कड़ाई से पालन किया जाये।”

13] A perusal of the aforesaid order clearly reveals that it has not adverted to any of the objections raised by the petitioner regarding the maintainability of the respondents’ objections, and their claim. The order is silent about any reasoning regarding the petitioner’s reply dated 20.11.2020, which has also been placed on record, running into 13 pages and 33 paragraphs. However, all these objections have remained untouched and unanswered, and even assuming that the Commissioner was not obliged to reflect upon each and every objection of the petitioner, however, he was still required to deal with it on its merits, by passing a reasoned order.

14] In such circumstances, the objections which are being raised before this Court for the first time by the respondent Nos.5 and 6 and also by the State in support of the aforesaid order passed by the Excise Commissioner, cannot be accepted as it is trite that the order passed by an authority cannot be supported by the State or any other party by filing reply to the petition challenging the aforesaid order.

15] Thus, this Court has no hesitation to hold that the impugned

order dated 07.11.2020, being cryptic in nature and bereft of reasoning, is liable to be and is hereby quashed, and the matter is remanded back to the Commissioner of Excise, M.P., to decide the dispute afresh, after giving due opportunity of hearing to all the parties concerned, and by passing a reasoned and speaking order, as simply quoting the entire order of the High Court in the order itself does not make it a reasoned order.

16] Let the aforesaid exercise be completed within a further period of two months.

17] With the aforesaid, the petition stands *allowed and disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj