

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

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 19th OF APRIL, 2022

Writ Petition No.	:	8791 of 2022
PETITIONER	Vs.	AKARSH JAISWAL S/O RAJENDRA JAISWAL OCCUPATION : BUSINESS HOUSE NO.27 AKARSH ENCLAVE NEAR SPORTS CLUB TILHRI DISTRICT – JABALPUR M.P. (MADHYA PRADESH)
RESPONDENTS		THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF EXCISE DISTRICT- JABALPUR, M.P. (MADHYA PRADESH). ASSISTANT EXCISE COMMISSIONER JABALPUR DISTRICT JABALPUR M.P. (MADHYA PRADESH). COLLECTOR, JABALPUR DISTRICT JABALPUR, (MADHYA PRADESH).
Name of counsel for parties	:	For Petitioner: Shri Sankalp Kochar, Advocate. For Respondent: Shri Amit Seth, Govt. Advocate. For Intervenors: Shri Sanjay Agrawal, Senior Advocate with Shri Rahul Gupta, Advocate.
Whether approved for reporting	:	Yes
Law laid down	:	1. There is no fundamental right to a citizen to carry out the trade or business in portable liquor as beverage <i>res extra commercium</i>. The State is having a right to create a monopoly in itself for the trade or business in such liquor. The State Government can place restrictions and limitations on such trade or business which may be in the nature different from those on trade or business in articles <i>res commercium</i>. [Para – 22 & 23]. 2. It is the event of dispute between the private and public at large, then the principles of natural justice are not required to be followed. The public grievances are required to be given weightage over the private grievances. There is no straight jacket formula for consideration of the fact that the principles of natural justice are required to be followed when the objections are raised by public at large with respect to continuation of liquor business at a particular place. The <i>audi alteram partem</i> rule is very flexible, malleable and adaptable concept of natural justice. It is just to adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. [Para – 25]. 3. The District Magistrate is having powers under Section 24 of the M.P. Excise Act, 1915 to even direct for stopping the liquor business at a particular place, in case he is having an apprehension that a law and order situation may arise. [Para- 11, 12].
Significant paragraphs	:	11, 12, 22, 23 and 25.

This petition coming on for admission this day, the court passed the following:

ORDER

The complainants have filed an application for intervening into the matter pointing out several facts and circumstances before this Court but the fact remains that on an application being filed the intervenors, the cognizance has been taken by the Authorities i.e. the Collector and the impugned order has been passed. Thus, virtually the complaint made by them is acted upon. Therefore, the intervenors who are the local residents of the area wherein the liquor shop is being opened has no locus to intervene into the writ petition, placing reliance upon the judgment passed by the Division Bench of this Court in the case of **M.P. Karmachari Congress Vs. State of M.P. and others [W.A. No.64/2021]** decided on 10.02.2021.

In such circumstances, once the complaint filed by the intervenor is already acted upon they don't have any locus to intervene into the writ petition.

Accordingly, the intervention application is **rejected**.

With the consent of the parties, the matter is heard.

Challenge is being made to the order dated 11.04.2022 sent on behalf of the respondent No.2, whereby the petitioner has been directed to shift the Composite Liquor Shop Gorakhpur - I to a place which is having no objection.

2. It is argued that only four days time have been granted to the petitioner for doing the needful which is affecting the business of the petitioner to a large extent, without there being any show cause

notice or opportunity of hearing granted to the petitioner. The order has been served upon the petitioner on 12.04.2022 at 7 P.M. It is argued that the petitioner is a rightful owner of the license under the M.P. Excise Act for undertaking the liquor business and after participating in the tender process, he was declared successful bidder for running a Composite Liquor Shop in area Gorakhpur vide order dated 31.03.2022. He entered into a rent agreement with one Rahul Khatri and others and has taken three floor building situated at Gorakhpur for a total amount of consideration of Rs.5,00,000/-. The agreement is valid upto 31.03.2022. It is submitted that in pursuance to the provisions of M.P. Excise Act, 1915, the Rules regarding location of any liquor shop is that “no liquor shop shall be deemed to exist within 50 meter radius of any religious institution, academic institution, hospital or a bus stand etc,” therefore, prior to finalisation of the shop, verification was got done by the Authorities in the presence of the Assistant Excise Commissioner, Jabalpur whereby it was observed that the distance between the liquor shop and one Wisdom Valley School is 75 meters. It is argued that impugned order does not reflect any reason for issuing a direction to the petitioner to shift the shop in question, coupled with the fact that he was never served with the so called objections which have been raised by the public at large. It is settled legal proposition that in case any order is passed having civil consequences then the opportunity of hearing should have been granted prior to passing such orders. Direction for shifting of shop will be adversely effecting the business of the petitioner and will be causing huge loss to him. Thus, the order is

per se illegal. He has drawn attention of this Court to the Gazette notification dated 31.03.2018 wherein Rule 2 of Rules as under :-

“Any shop for the sale of liquor shall not be situated upto a distance of 50 meters from lawful religious institution, girls school, girls college and lawful girls hostel.”

3. It is argued that after due verification of the location of the shop, the same has been permitted to be run by the petitioner. The petitioner has already invested huge amount and has also entered into a rent agreement. Once the Authorities have visited the site and has verified that the aforesaid shop is not violating any of the Rules and Regulations of the Excise Act, but all of a sudden on a so called objections raised by the public with respect to the shop which has never communicated to the petitioner, the order impugned has been passed. It is submitted that in identical circumstances, this Court has dealt with the cases wherein similar orders have been passed by the Authorities and the Court has intervened in the matter and has virtually stayed the operation of the orders. He has further pointed out to this Court, the General Rules of allotment and running of liquor shop and has placed reliance upon Rule 2 which says that atleast an opportunity of hearing should have been granted to the shop allottee to substantiate his case, in case of any objection and further upon Clause 2 (Kha) wherein the distance from the objectionable places should be 50 meters. The mode of calculating the distance is also being provided in Clause 4 (Ga) and following the same, the measurement of the distance from the nearest school has been taken. In such circumstances, there is virtually no violation of any of the terms and conditions and rules and regulations.

4. Placing heavy reliance upon the judgments passed by this Court in the case of **Ashok Kumar Pandey Vs. The State of Madhya Pradesh** (Writ Petition No.7422/2017) wherein on an objection taken by a Cabinet Minister, the liquor shop was directed to be closed. This Court has considered and granted the interim relief on 19.06.2017. The petitioner is still pending and the Government has not even bothered to file reply to the aforesaid. He has further pointed out the order dated 24.07.2018 passed in the case of **M/s A.P.J.Sales Vs. The State of Madhya Pradesh [Writ Petition No.16375/2018]** dealing with a running of a foreign liquor shop and in similar circumstances by the impugned order, the Collector has directed to shift the shop to some other place where there is no objection and the effect and operation of the impugned order was stayed. The aforesaid petition is also pending. Further he has placed reliance upon the judgment passed by the Supreme Court and this Court with respect to following the principles of natural justice and filing of writ petition in the event of availability of alternative and efficacious remedy; and has tried to substantiate that every case has to be looked into in terms of the facts and circumstances of the case; and there cannot be any straight jacket formula for not to entertain a writ petition under Article 226 of the Constitution of India directly before this Court.

5. Placing heavy reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others** reported in (1998) 8 SCC 1, **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. And others** reported in (2003) 2 SCC 107, **Godrej**

Sara Lee Limited Vs. Assistant Commissioner (AA) and another reported in (2009) 14 SCC 338 and has argued that alternative and efficacious remedy is no bar to entertain the writ petition under Article 226 of the Constitution of India. It is submitted that the petitioner was a successful bidder and was allotted the Composite Liquor Shop of entire Gorakhpur and after verification of the place where the petitioner was starting his shop (Panchnama Annexure P-4), the petitioner invested huge amount and has started his business. All of a sudden on a general objection taken by the local residents, the Collector has directed the petitioner to shift the shop at a non-objectionable place within four days. In such circumstances, interference is warranted.

6. Per contra, learned counsel appearing for the respondents by filing a response to the writ petition has supported the impugned order and has pointed out that the order has been passed by the competent authorities after taken into consideration the objections which have been filed by the local residents (the public at large) and considering the fact that there can be a law and order situation. A preliminary objection has been taken regarding maintainability of the writ petition for want of alternative remedy. It is argued that the order passed by the Collector can always be put to challenge by filing an appeal or revision as contained in Section 62 of M.P. Excise Act, 1915. Without availing the alternative and efficacious remedy, the petition directly filed before this Court is not maintainable. It is argued that the petitioner was granted the Composite Shop of entire area of Gorakhpur in pursuance to the new Excise Policy of the year 2022-23. The petitioner was well

aware of the fact that he is required to identify the place for running a shop which should be a non-objectionable place. Clause 11.7 of the Policy clearly deals with the condition that the petitioner is required to submit an affidavit and in pursuance to Clause 9 of the affidavit, it is the responsibility of the petitioner that the place where he is starting his business should be a non-objectionable place and the petitioner was well aware of the aforesaid contents of the affidavit. When the liquor shop were opened immediately within 3 - 4 days, the objection were raised by the local residents regarding running of the shop, for which certain public agitations like *Dharna Pradarshan* has been done by the female residents of the area. The aforesaid can be demonstrated through photographs. On 05.04.2022, a spot inspection was carried out by the Assistant Excise Commissioner, Jabalpur along with his team of Excise Officers wherein he has found that a protest has been held by the local residents by putting up a Pandal at the said place, the road to the liquor shop was blocked by the women sitting at the main door of the liquor shop and opening of the liquor shop was being opposed. The licensee has to shut down the liquor shop for some time as the crowd was getting out of control. The local residents have taken an objection that the place is not suitable for the liquor shop due to school nearby and dense population settlement around it. Several slogans and protest were raised by the local residents. Considering the inspection report which has been submitted under the signatures of the Excise Commissioner dated 05.04.2022 which is filed along with the return, apprehending a law and order situation, the Collector has

passed the impugned order. It is within the domain of the Collector to pass such order for shifting/relocation of the shop.

7. It is argued that the petitioner is bound by his affidavit which has been given at the time of allotment of the shop and it is the responsibility of the petitioner to shift the liquor shop at a non-objectionable place in terms of Rules of General Application. It is argued that the Collector has power to regulate the functioning or relocation of the liquor shop, in case, the same is affecting the public. He has further drawn attention of this Court to Section 24 of the M.P. Excise Act, 1915 wherein for closing of a shop for sake of public peace the powers are with the District Collector who can even direct for closure of the shop for maintaining the public peace. It is submitted that in the present case, the Collector has not directed for closure of the liquor shop rather, he has directed for shifting of the liquor shop to a non-objectionable place within a reasonable time, for which four days time was granted to the petitioner, but the fact remains that the petitioner has not shifted the shop in question and has challenged the aforesaid order by filing a writ petition, which is contrary to the affidavit which has been submitted by the petitioner at the time of allotment in the tender proceedings. It is argued that the case laws which have been relied upon by the petitioner are with respect to closure of the shop or shifting of the shops but in the present case there is a huge agitation taken by the public at large which was taken cognizance by the competent authority i.e. the Collector. It is submitted that prior to passing such orders a spot inspection was already carried out, therefore, there is no illegality in the impugned order passed

by the Collector in directing for shifting the liquor shop. Even otherwise, running a liquor business is not fundamental right as has been held by the Constitutional Bench of the Supreme Court as well as by this Court in large number of cases, therefore, the petitioner is bound to shift the shop in question at a non-objectionable place and should have followed the terms and conditions of the New Excise Policy of 2022-23 and also comply with the affidavit which has been submitted by him.

8. Heard the learned counsel for the parties and perused the record.

9. From a perusal of the record, it is not disputed that the petitioner is a license holder for running a liquor shop and in terms of Excise Policy of 2022-23, he has been allotted a composite license to run liquor shops in the area Gorakhpur. A *Panchanama* has also been prepared with respect to the shop in question in presence of Assistant Commissioner, Excise wherein he has pointed out that distance from the school is 75 meters. However, there a big objection taken by the public at large regarding running of a liquor shop at the premises in question by the petitioner and to certain extent some agitations are also being pointed out which is reflected from the reply filed by the State Government. It is the case of the petitioner that the impugned order is having civil consequences, therefore, atleast an opportunity of hearing should have been granted to him prior to passing of such an order.

10. The basic question which is required to be dealt with in the present case is that as to whether the petitioner is having any right to run the shop in question at the said premises?; and whether the

District Magistrate is having power and authority to pass such an order without even providing any opportunity of hearing to the petitioner?

11. Section 24 of the M.P. Excise Act, 1915 is required to be seen in this regard, which read as under:

“24. Closing of shops for the sake of public peace.—

(1) The District Magistrate, by notice in writing to the licensee, may require, that any shops in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

(2) If a riot of unlawful assembly is apprehended or occurs in the vicinity of any shop, a Magistrate of any class, who is present, may require such shop to be kept closed for such period as the may think necessary: Provided that, when any such riot or unlawful assembly occurs, a licensee shall, in the absence of the Magistrate, close his shop without any order.

(3) When any Magistrate issues an order under sub-section (2), the shall forthwith inform the Collector of his action and his reasons thereof. ”

12. A perusal of Section 24 of the Act, 1915 makes it clear that the District Magistrate is having power to direct closure of a liquor shop, if there is apprehension of a riot or unlawful assembly.

13. The *vires* of Section 24 was changed in the case of **Shatrughanlal vs. State of M.P., 1997(2) MPLJ 54**, wherein, the Division Bench of this Court has rejected a petition holding that the provision does not suffer any invalidity of conferring channelized and unfettered power on the District Magistrate.

14. New policy of the year 2022, Clause 2 provides for मदिरा दुकानों की नवीन व्यवस्था which read as under:

“2 मदिरा दुकानों की नवीन व्यवस्था :-

2.1 कम्पोजिट दुकान :- वर्ष 2022-23 में प्रदेश की समस्त मदिरा दुकाने कम्पोजिट शॉप होंगी अर्थात इन पर देशी एवं विदेशी मदिरा दोनों ही विक्रय हेतु उपलब्ध रहेगी परन्तु ग्रामीण क्षेत्र की ऐसी दुकान जो वर्ष 2021-22 में देशी मदिरा दुकान थी, पर देश के बाहर से आयातित (BIO) मदिरा के विक्रय की अनुमति नहीं होगी ।

2.2 वर्तमान मदिरा दुकानों का रिलोकेशन (स्थान परिवर्तन)रू-कलेक्टर एवं जिले के समस्त माननीय विधायक गण की उच्च स्तरीय जिला समिति को उनके जिले की स्थानीय आवश्यकताओं के अनुरूप मदिरा दुकानों को भौगोलिक दृष्टि से रिलोकेट (स्थान परिवर्तन) करने का अधिकार होगा। ऐसे स्थान परिवर्तन करते समय इस जिला समिति द्वारा स्थानीय भावनाओं तथा आबकारी नियमों को दृष्टिगत रखा जाएगा। ऐसी रिलोकेटेड दुकानों के समूह के ठेका का नवीनीकरण नहीं किया जाएगा। इनका निष्पादन ई-टेंडर के माध्यम से ही किया जावेगा।”

15. From a perusal of the aforesaid Clauses, it is apparently clear that the Collector is having powers to direct for relocation of the shop in question.

16. A committee has been constituted which is reflected from order dated 25.01.2022 issued by the Excise Commissioner, which reads as under:

2 मदिरा दुकानों के निष्पादन हेतु प्रत्येक जिले में गठित समिति निम्नानुसार होगी

1.1	कलेक्टर	अध्यक्ष
1.2	पुलिस अधीक्षक	सदस्य
1.3	संबंधित संभाग के उपायुक्त आबकारी	सदस्य
1.4	मुख्य कार्यपालन अधिकारी (जिला पंचायत)	सदस्य
1.5	सहायक आबकारी आयुक्त/जिला आबकारी अधिकारी सदस्य सचिव	सदस्य

17. The procedure for relocating the shop is also provided in clause 1 which reads as under:

“1- वर्तमान मदिरा दुकानों का रिलोकेशन (स्थान परिवर्तन)

आबकारी नीति वर्ष 2022-23 की कण्डिका 2.2 तथा कण्डिका 4 के प्रावधानों के अनुरूप कलेक्टर एवं सम्बंधित विधानसभा क्षेत्र के माननीय विधायक गण (वे विधायक जिनकी विधानसभा क्षेत्र से मदिरा दुकान को हटाया जाना तथा जिनकी विधानसभा क्षेत्र में मदिरा दुकान को स्थापित किया जाना प्रस्तावित है) की उच्च स्तरीय समिति की सहमति से, उनके क्षेत्र की स्थानीय आवश्यकताओं के अनुरूप मदिरा दुकान का भौगोलिक दृष्टि से रिलोकेशन (स्थान परिवर्तन) किया जा सकेगा। ऐसा स्थान परिवर्तन करते समय इस उच्च स्तरीय समिति द्वारा स्थानीय भावनाओं तथा आबकारी नियमों को दृष्टिगत रखा जाएगा। इस संबंध में सभी जिला कलेक्टर को जारी इस कार्यालय के पत्र क्रमांक 7-ठेका/2022-23/20 कैम्प, भोपाल दिनांक 22.01.2022 के अनुसार कार्यवाही, दिनांक 28-01-2022 तक की जाना सुनिश्चित करें।”

18. A perusal of the aforesaid provisions, it is apparently clear that prior to relocating a liquor shop, a High Level Committee has been formulated, is required to give an opinion and the committee should give opinion of relocation of a liquor shop and the committee is required to take into consideration the public sentiments and Excise Rules while giving an opinion with respect of relocation of a liquor shop. Although the Collector is having powers to direct for shifting of a liquor shop at a non-objectionable place, the impugned order also reflects the same that the shop in question is directed to be shifted at a non-objectionable place. Letter dated 06.04.2022 has been issued by the Assistant Excise Commissioner pointing out the fact that the shop in question is required to run at a non-objectionable place.

19. A detailed representation to the District Collector, Jabalpur has been given by the local residents of Goodluck Apartments, Narmada Homes for shifting of the liquor shop. The photographs which have been filed alongwith the reply filed by the State Government also show that there is a protest and agitation taken up

by the public at large and local residents with respect to running of a liquor shop in their locality.

20. From the aforesaid, it is apparently clear that the District Magistrate is having powers to direct for relocation of a liquor shop in case there is an objection and possibility of law and order situation.

21. Hon'ble Supreme Court in the case of **Chingleput Bottlers vs. Majestic Bottling Company** reported in **1984 (3) SCC 258** has held as under:

“32. There is authority for the proposition that an authority or body need not observe the rules of natural justice where its decision, although final, relates not to a “right” but to a “privilege or licence”. In a number of recent decisions, the courts have, while extending the protection of natural justice in the former category of claims, denied such protection to the latter category. All that is emphasized in such cases is that the applications must be considered fairly. In *R.v.Gaming Board for Great Britain, ex parte Benaim*[(1970) 2 All ER 528 : (1970) 2 QB 417 : (1970) 2 WLR 1009 (CA)] the Court of Appeal held that in refusing a certificate for reasons concerning the character and suitability of the applicants, the Board must act fairly and obey the broad principles of natural justice. In fact, it was held that they had done so since they had given the applicants full opportunity to know and contest the case against them, even though they had not revealed the sources of their information or given their reasons. It follows that the right to know the case to be met does not necessarily involve any right to know the source of adverse information or to confront the informants, for in some cases it would be quite proper for the authority to employ confidential sources.

39. It is now well-settled that, while considering the question of breach of the principles of natural justice, the Court should not proceed as if there are inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they have to act.”

22. Hon'ble Supreme Court in the case **Khoday Distilleries Ltd. And others vs. State of Karnataka and others**, reported in (1995) 1 SCC 574 has held as under:

“62. We, therefore, hold that a citizen has no fundamental right to trade or business in liquor as beverage. The State can prohibit completely the trade or business in potable liquor since liquor as beverage is *res extra commercium*. The State may also create a monopoly in itself for trade or business in such liquor. The State can further place restrictions and limitations on such trade or business which may be in nature different from those on trade or business in articles *res commercium*. The view taken by this Court in *K.K. Narula case* [(1967) 3 SCR 50 : AIR 1967 SC 1368] as well as in the second *Synthetics and Chemicals Ltd. case* [(1990) 1 SCC 109] is not contrary to the aforesaid view which has been consistently taken by this Court so far.”

23. A full Bench of this Court in the case of **Chingalal Yadav vs. State of M.P. and others**, reported in 2010 (2) MPLJ 443 following the judgment passed by the Hon'ble Supreme Court in the case of **Khoday Distillers Ltd. (supra)** has held as under:

“24. Having formulated the issues which arise for consideration we proceed to deal with them in seriatim.

(i) nature of right to deal in business of liquor :

25. The Constitution Bench of the Supreme Court in *Har Shankar and Others etc. v. The Deputy Excise and Taxation Commissioner and others, etc.*, AIR 1975 SC 1121 while dealing with right to deal in the business of intoxicants approved the ratio of earlier decisions, namely, decision of the Constitution Bench in the *State of Bombay vs. F.N. Balsara*, AIR 1951 SC 318 and *Cooverjee B. Bharucha v. Excise Commr. And the Chief Commr. , Ajmer*, AIR 1954 SC 220, *State of Assam v. A. N. Kidwai* AIR 1957 SC 414, *Nagendra Nath Vora and another vs. Commissioner of Hills Division*, AIR 1958 SC 398, *Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura*, AIR 1972 SC 1863, *State of Bombay vs. R.M.D.Chamarbaugwala*, AIR 1957 SC 699, *State of Orissa v. Harinarayan Jaiswal*, AIR 1972 SC 1816 and *Nashirwar etc. vs. State of M.P. And others*, AIR 1975 SC 360

and has held that there is no fundamental right to do the business or deal in intoxicants.

26. Another constitution Bench of the Supreme Court in *Khoday Distilleries Ltd. And Others v. State of Karnataka and Others*, (1995)1 SCC 574 after taking note of all previous decisions on the nature of right to deal in business of liquor summarized the law on the subject as follows:

"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 practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized 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 maximize 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 for preventing their abuse or diversion for use as or in beverage."

27. Similarly another Constitution Bench of the Supreme Court in *Devans Modern Breweries Ltd* and another (*supra*) held 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. It was further held that 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 exercise of power to

part with privilege. Similar view was taken by a two-Judge Bench of the Supreme Court in a recent decision reported in (2009) 3 SCC 157 wherein once again it was reiterated that no person has any fundamental right to carry on business in liquor it being *res extra commercium*.

28. Thus, from the aforesaid authoritative pronouncement of law by the Supreme Court it is graphically clear that no citizen has any fundamental right to trade or carry on business in liquor and all forms of dealing in liquor have from their inherent nature, been treated as class by themselves by all civilized societies. In view of injurious effect of excessive consumption of liquor on health the trade or business of liquor must be treated as a class by itself and cannot be treated on the same basis while considering the challenge on the touchstone of Article 14 of the Constitution of India.”

24. From the aforesaid proposition of law settled by the Constitution Bench of Hon’ble Supreme Court as well as a Full Bench of this Court, it is apparently clear that no person is having any fundamental right to trade or carry on the business of liquor.

25. As far as following the principle of natural justice, in case where a public interest is involved is concerned, the Hon’ble Supreme Court in the case of **Swadeshi Cotton Mills vs. Union of India** reported in (1981) 1 SCC 664 has held as under:

“78. The *audi alteram partem* rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure), this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by *Dr Bina Pani* [AIR 1967 1269 : (1967) 2 SCR 625], *Kraipak* [(1969) 2 SCC 262 : (1970) 1 SCR 457], *Mohinder Singh Gill* [(1978) 1 SCC 405 : (1978) 2 SCR 272], *Maneka Gandhi* [1964 AC 40 : (1963) 2 All ER 66 (HL)]. They are now considered so

fundamental as to be “implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. **Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation.** Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of Judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of Judges to apply the principles of natural justice where there is suspicion of public mischief, and only property rights and vested interests are involved.”

26. Thus, from the perusal of the aforesaid, it is apparently clear that where elements of public interest is involved, there is no requirement for following the principle of natural justice and the competent authority is having powers to pass an order considering the situation of law and order and public interest. In the present case, element of public interest is involved in the matter, as is

reflected from the complaints which have been made to the District Collector by the local residents of the area wherein the liquor shop in question is opened and is being run by the petitioner. From the impugned order, it is also clear that no opportunity of hearing has been provided to the petitioner and no direction for closing of the liquor shop is being given to the petitioner. An affidavit has also been submitted by the petitioner that he will run the liquor shop at a non-objectionable place. The objections which have been raised by the public at large have to be taken consideration by the District Collector to make it at a non-objectionable place. The Assistant Commissioner of Excise has visited the shop in question and has given his report on 05.04.2022 immediately within four days of the opening of the liquor shop. The committee which has been formulated for relocation of the shop in question has to be consulted prior to shifting of the shop and the District Magistrate has to take an opinion with respect to the new place where the shop is proposed to be shifted by a license holder. Thus, no illegality appears to have been committed by the District Collector, who is the competent authority to pass such an order for shifting of the liquor shop owing to public agitation. In such circumstances, the order impugned just and proper and does not call for any interference in the present writ petition.

27. The petition *sans* merits and is hereby **dismissed**.

(Vishal Mishra)
Judge

AM/SJ.