

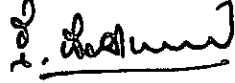
**ಕರ್ನಾಟಕ ವಿಧಾನ ಪರಿಷತ್ತು**

ಚುಕ್ಕೆ ಗುರುತಿಲ್ಲದ ಪ್ರಶ್ನೆ ಸಂಖ್ಯೆ	619
ಮಾನ್ಯ ಸದಸ್ಯರ ಹೆಸರು	ಶ್ರೀ ಆರ್.ಪ್ರಸನ್ನ ಕುಮಾರ್ (ಸ್ಥಳೀಯ ಸಂಸ್ಥೆ ಕ್ಷೇತ್ರದಿಂದ ಚುನಾಯಿತರಾದವರು)
ಉತ್ತರಿಸಬೇಕಾದ ದಿನಾಂಕ	04.03.2021
ಉತ್ತರಿಸಬೇಕಾದವರು	ಮಾನ್ಯ ಅಬಕಾರಿ ಸಚಿವರು

ಕ್ರ.ಸಂ.	ಪ್ರಶ್ನೆ	ಉತ್ತರ
ಅ)	2019-20 ಮತ್ತು 2020-21 ನೇ ಸಾಲಿನಲ್ಲಿ ನಿಗಮದಲ್ಲಿ ಸನ್ನದುದಾರರು ಮಾಡಿರುವ ಮಾದರಿಗಳ ನೀಡುವುದು;	ಉತ್ತರ ಸರ್ಕಾರದಿಂದ ಮಂಜೂರಾದ ಎಲ್ಲಾ ಮಧ್ಯ ಮಾರಾಟ ಸನ್ನದುಗಳು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪಾನೀಯ ನಿಗಮ ನಿಯಮಿತದ ಡಿಪೋಗಳಿಂದಲೇ ಮದ್ಯವನ್ನು ಖರೀದಿಸಿ ನಂತರದಲ್ಲಿ ಗ್ರಾಹಕರಿಗೆ ಮಾರಾಟ ಮಾಡಲಾಗುತ್ತದೆ. ಪಾನೀಯ ನಿಗಮದಿಂದ ವಿವಿಧ ಮಾದರಿಯ ಮದ್ಯವಾದ ಬ್ರಾಂಡಿ, ವಿಸ್ಕಿ, ರಮ್, ಜಿನ್, ವೋಡ್ಕಾ, ಟಿಕಿಲಾ, ಬಿಯರ್, ವೈನ್ ಹಾಗೂ ಲೋ ಆಲ್ಕೋಹಾಲಿಕ್ ಬೀವರೇಜಸ್ (ಎಲ್.ಎ.ಬಿ) ಮಾದರಿಗಳನ್ನು ಅಬಕಾರಿ ಸನ್ನದುದಾರರು ಖರೀದಿಸಲು ಅನುವು ಮಾಡಲಾಗಿರುತ್ತದೆ.
ಆ)	ರಾಜ್ಯದಲ್ಲಿ 2019 ರಿಂದ ಇಲ್ಲಿಯವರೆಗೆ ಮದ್ಯದ ಮಾರಾಟದಿಂದ ತೆರಿಗೆ ಮೊತ್ತ (ಜಿಲ್ಲಾವಾರು ನೀಡುವುದು)	ಉತ್ತರ ಸರ್ಕಾರವು 2019-20ನೇ ಆರ್ಥಿಕ ವರ್ಷದಲ್ಲಿ ಅಬಕಾರಿ ಇಲಾಖೆಗೆ ರೂ.20,950.00 ಕೋಟಿಗಳಷ್ಟು ರಾಜಸ್ವ ಗುರಿಯನ್ನು ನಿಗದಿಪಡಿಸಿದ್ದು, ಅದರಂತೆ ಎಲ್ಲಾ ಅಬಕಾರಿ ಮೂಲಗಳಿಂದ ರೂ.21,583.95 ಕೋಟಿಗಳಷ್ಟು ರಾಜಸ್ವ ಸಂಗ್ರಹವಾಗಿರುತ್ತದೆ. 2020-21ನೇ ಸಾಲಿಗೆ ಅಬಕಾರಿ ಇಲಾಖೆಗೆ ಸರ್ಕಾರವು ರೂ.22,700 ಕೋಟಿಗಳ ರಾಜಸ್ವ ಸಂಗ್ರಹಣೆ ಗುರಿ ನಿಗದಿಪಡಿಸಲಾಗಿದ್ದು, ಏಪ್ರಿಲ್ 2020 ರಿಂದ ಫೆಬ್ರವರಿ 2021ರ ಅಂತ್ಯಕ್ಕೆ ರೂ.20,909.47 ಕೋಟಿಗಳಷ್ಟು ಅಬಕಾರಿ ರಾಜಸ್ವ ಸಂಗ್ರಹವಾಗಿರುತ್ತದೆ. ಜಿಲ್ಲಾವಾರು ಸಂಗ್ರಹಿಸಲಾದ ರಾಜಸ್ವ ವಿವರವನ್ನು ಅನುಬಂಧ-1 ರಲ್ಲಿ ನೀಡಲಾಗಿದೆ.

<p>ಇ) ಎಂ.ಎಸ್.ಐ.ಎಲ್ ಮೂಲಕವಲ್ಲದೇ ಖಾಸಗಿಯಾಗಿ ಹೊಸದಾಗಿ ಮದ್ಯದ ಅಂಗಡಿಯ ಪರವಾನಗಿಯನ್ನು ನೀಡಲಾಗುತ್ತಿದೆಯೇ? (ಪೂರ್ಣ ವಿವರ ನೀಡುವುದು)</p>	<p>ಸರ್ಕಾರವು 1992 ರಿಂದ ಸಿಎಲ್-2 ಮತ್ತು ಸಿಎಲ್-9 ಮದ್ಯಮಾರಾಟ ಸನ್ನದುಗಳ ಮಂಜೂರಾತಿಗೆ ನಿರ್ಬಂಧ ವಿಧಿಸಿರುತ್ತದೆ. ರಾಜ್ಯದಲ್ಲಿ ಹೊಸದಾಗಿ ಸರ್ಕಾರಿ ಸ್ವಾಮ್ಯದ ಎಂ.ಎಸ್.ಐ.ಎಲ್. ಸಂಸ್ಥೆಗೆ ಚಿಲ್ಲರೆ ಮದ್ಯ ಮಾರಾಟದ ಸಿಎಲ್-11 ಸನ್ನದುಗಳನ್ನು ನೀಡಲಾಗುತ್ತಿದ್ದು, ಇದರೊಂದಿಗೆ ಕರ್ನಾಟಕ ಅಬಕಾರಿ (ದೇಶಿ ಮತ್ತು ವಿದೇಶಿ ಮದ್ಯ ಮಾರಾಟ) ನಿಯಮಗಳು 1968 ರ ನಿಯಮ 3 ರನ್ವಯ, ಸಿಎಲ್-4 (ಕ್ಲಬ್ ಸನ್ನದು), ಸಿಎಲ್-5 (ಸಾಂಧರ್ಭಿಕ ಸನ್ನದು), ಸಿಎಲ್-6 (ವಿಶೇಷ ಸನ್ನದುಗಳು), ಸಿಎಲ್-6ಎ (ಸ್ಪಾರ್ ಹೋಟೆಲ್ ಸನ್ನದುಗಳು), ಸಿಎಲ್-7 (ಹೋಟೆಲ್ ಮತ್ತು ಬೋರ್ಡಿಂಗ್ ಹೌಸ್ ಸನ್ನದುಗಳು), ಸಿಎಲ್-7(ಎ) ಪ್ರವಾಸಿ ಹೋಟೆಲ್ ಸನ್ನದುಗಳು, ಸಿಎಲ್-7 ಬಿ (ಟೂರಿಸ್ಟ್ ಹೋಟೆಲ್ ಬೀರ್ ಬಾರ್ ಸನ್ನದುಗಳು), ಸಿಎಲ್-7ಸಿ (ರೈಲ್ವೆ ಇಲಾಖೆಗೆ ನೀಡುವ ಸನ್ನದುಗಳು), ಸಿಎಲ್-8 (ಮಿಲಿಟರಿ ಕ್ಯಾಂಟೀನ್), ಸಿಎಲ್-8 (ಮಿಲಿಟರಿ ಕ್ಯಾಂಟೀನ್ ಸ್ಟೋರ್ಸ್ ಬ್ಯಾಂಡೆಡ್ ವೇರ್ ಹೌಸ್ ಸನ್ನದುಗಳು), ಸಿಎಲ್-8ಬಿ (ಬಿ.ಎಸ್.ಎಫ್. ಅಥವಾ ಪ್ಯಾರಾ ಮಿಲಿಟರಿ ಫೋರ್ಸಸ್ ಸನ್ನದುಗಳು), ಸಿಎಲ್-14 (ಅಂತರ ರಾಷ್ಟ್ರೀಯ ವಿಮಾನ ನಿಲ್ದಾಣಕ್ಕೆ ನೀಡುವ duty free shops), ಸಿಎಲ್-15 (ಅಂತರ ರಾಷ್ಟ್ರೀಯ ವಿಮಾನ ನಿಲ್ದಾಣಕ್ಕೆ ನೀಡುವ ರಿಫ್ರೆಶ್‌ಮೆಂಟ್ ರೂಂ (ಬಾರ್)) ಸನ್ನದುಗಳನ್ನು ಹೊಸದಾಗಿ ಮಂಜೂರು ಮಾಡಲು ಅವಕಾಶ ಕಲ್ಪಿಸಲಾಗಿರುತ್ತದೆ. ಸಂಬಂಧಪಟ್ಟ ನಿಯಮದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-2 ರಲ್ಲಿ ನೀಡಲಾಗಿದೆ.</p>
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ಆಇ 06 ಇಎಲ್‌ಕ್ಯೂ 2021

  
(ಕೆ. ಗೋಪಾಲಯ್ಯ)  
ಅಬಕಾರಿ ಸಚಿವರು

## ಅನುಬಂಧ - 1

2019-20 ಮತ್ತು 2020-21ನೇ ಸಾಲುಗಳಲ್ಲಿ ಸಂಗ್ರಹವಾಗಿರುವ ಜಿಲ್ಲಾವಾರು ಅಬಕಾರಿ ರಾಜಸ್ವದ ವಿವರ

ಕ್ರ. ಸಂ	ಜಿಲ್ಲೆಗಳು	2019-20	2020-21 (ಫೆಬ್ರವರಿ -2021ರ ಅಂತ್ಯಕ್ಕೆ)
<b>ಬೆಂಗಳೂರು ವಿಭಾಗ</b>			
1	ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ	7339.27	7503.22
2	ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ	4722.15	4729.29
3	ಚಿಕ್ಕಬಳ್ಳಾಪುರ	12.60	12.12
4	ಕೋಲಾರ	16.97	16.85
5	ರಾಮನಗರ	378.92	356.16
6	ತುಮಕೂರು	367.45	344.66
<b>ಒಟ್ಟು</b>		<b>12837.35</b>	<b>12962.30</b>
<b>ಬೆಳಗಾವಿ ವಿಭಾಗ</b>			
1	ಬಾಗಲಕೋಟೆ	21.26	18.43
2	ಬೆಳಗಾವಿ	222.74	190.47
3	ವಿಜಯಪುರ	21.01	17.91
4	ಧಾರವಾಡ	1132.46	1018.74
5	ಹಾವೇರಿ	10.72	9.52
<b>ಒಟ್ಟು</b>		<b>1408.20</b>	<b>1255.08</b>
<b>ಕಲಬುರಗಿ ವಿಭಾಗ</b>			
1	ಬೀದರ್	16.14	14.86
2	ಕಲಬುರಗಿ	1184.30	1017.46
3	ರಾಯಚೂರು	12.55	11.95
4	ಯಾದಗಿರಿ	5.94	4.88
<b>ಒಟ್ಟು</b>		<b>1218.92</b>	<b>1049.15</b>
<b>ಹೊಸಪೇಟೆ ವಿಭಾಗ</b>			
1	ಬಳ್ಳಾರಿ	1173.38	1103.69
2	ಚಿತ್ರದುರ್ಗ	15.90	15.10
3	ದಾವಣಗೆರೆ	15.97	14.90
4	ಗದಗ	8.37	8.12
5	ಕೊಪ್ಪಳ	9.69	8.77
<b>ಒಟ್ಟು</b>		<b>1223.32</b>	<b>1150.58</b>
<b>ಮಂಗಳೂರು ವಿಭಾಗ</b>			
1	ದಕ್ಷಿಣ ಕನ್ನಡ	337.98	294.98
2	ಕೊಡಗು	14.17	12.89
3	ಶಿವಮೊಗ್ಗ	24.14	24.02
4	ಉಡುಪಿ	218.24	196.76
5	ಉತ್ತರ ಕನ್ನಡ	9.94	9.26
<b>ಒಟ್ಟು</b>		<b>604.47</b>	<b>537.91</b>
<b>ಮೈಸೂರು ವಿಭಾಗ</b>			
1	ಚಾಮರಾಜನಗರ	6.97	6.10
2	ಚಿಕ್ಕಮಗಳೂರು	13.52	12.77
3	ಹಾಸನ	1768.98	1618.46
4	ಮಂಡ್ಯ	15.06	14.97
5	ಮೈಸೂರು	2487.16	2302.16
<b>ಒಟ್ಟು</b>		<b>4291.68</b>	<b>3954.45</b>
<b>ರಾಜ್ಯದ ಒಟ್ಟು</b>		<b>21583.95</b>	<b>20909.47</b>

ವಿ.ಸಂ:- 2016-17ನೇ ಸಾಲಿನಿಂದ ಇಲಾಖೆಯಲ್ಲಿ ಎಲ್ಲಾ ರೀತಿಯ ತೆರಿಗೆಗಳನ್ನು e-payment ವ್ಯವಸ್ಥೆ ಮುಖಾಂತರ ಪಾವತಿಸುತ್ತಿದ್ದು, ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಿಲ್ಲೆಗಳ ಅಬಕಾರಿ ಪಾವತಿಗಳು ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆಯ ಖಜಾನೆಯು Cyber Treasury ಯಾಗಿರುವುದರಿಂದ, ರಾಜ್ಯದಲ್ಲಿ ಎಲ್ಲೇ ಪಾವತಿ ಮಾಡಿದರೂ ಬೆಂಗಳೂರು Cyber Treasury ನಲ್ಲಿ ಜಮೆಯಾಗಿರುತ್ತದೆ. ಆದಾಗ್ಯೂ ಜಿಲ್ಲಾ ಅಬಕಾರಿ ಉಪ ಆಯುಕ್ತರುಗಳ ಕಛೇರಿಗಳಿಂದ ಮಾಹಿತಿಯನ್ನು ಪಡೆದು ಜಿಲ್ಲಾವಾರು ರಾಜಸ್ವವನ್ನು ಸಿದ್ಧಪಡಿಸಲಾಗಿರುತ್ತದೆ.

೨೨ ೦೬ ಫೆಬ್ರವರಿ ೨೦೨೧

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previously published, as required by sub-section (1) of Section 71 of the said Act in Notification GSR No. 479 in Part IV Section 2C(i) of the Karnataka Gazette, Extraordinary, dated 26th October, 1967, namely. —

1. Title, application and commencement. — (1) These rules may be called the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968.

(2) They shall apply to the sale of Indian liquor '[x x x x]' and Foreign liquor.

(3) They shall come into force at once.

**CASE LAW**

Public interest petition filed under Article 32 not entertainable as it sought to enforce Directive Principles under Article 47.

The writ petition filed under Article 32 of the Constitution is that the policy of prohibition is not being implemented as enjoined by Article 47. The petition is not entertainable. Article 47 of the Constitution, which is part of Directive Principles of State Policy enjoins that the State shall regard the raising of level of the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Article 47 as in Part IV of the Constitution which contains Directive Principles of State Policy. Article 37 enjoins that the provisions of this part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It has to be borne in mind that Article 32 of the Constitution gives the Supreme Court the power to enforce rights which are fundamental rights. Fundamental rights are justiciable, Directive Principles are not. Directive Principles are aimed at securing certain values or enforce certain attitudes in the law making and in the administration of law. Directive Principles cannot in the very nature of things be enforced in a Court of law. Whether a law should be made embodying the principles of Directive Principles depends on the legislative will of the legislation. Article 32 is not the machinery through which policy preferences or priorities are determined and Supreme Court is not the forum where the conflicting claims of policies or priorities should be debated. To make the State accept a particular policy, desirable and necessary as it may be is not the function of Article 32 of the Constitution. Article 32 is not the nest for all the bees in the bonnet of 'public spirited persons'. — *B. Krishna Bhat v Union of India*, (1990)3 SCC 65. [Articles 32 and 47]

To make the State accept a particular policy — Not the function of Article 32

The petition under Article 32 is that the policy of prohibition is not being implemented as enjoined by Article 47 of the Constitution. Article 47 of the Constitution, which is part of our Directive Principles of State Policy

1. The brackets and words "(other than arrack)" omitted by GSR 273, dated 3-8-1972, w.e.f. 4-8-1972.

enjoins that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Article 47 as in Part IV of the Constitution which contains Directive Principles of State Policy. Article 37 enjoins that the provisions of this part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It has to be borne in mind that Article 32 of the Constitution gives the Supreme Court the power to enforce rights which are fundamental rights. Fundamental rights are justiciable, directive principles are not. Directive principles are aimed at securing certain values or enforce certain attitudes in the law making and in the administration of law. Directive principles cannot in the very nature of things be enforced in a Court of law. Whether a law should be made embodying the principles of directive principles depends on the legislative will of the legislation. Article 32 is not the machinery through which policy preferences or priorities are determined and this Court is not the forum where the conflicting claims of policies or priorities should be debated. To make the State accept a particular policy, desirable and necessary as the policy might be is not the function of Article 32 of the Constitution. Article 32 of the Constitution is not the nest for all the bees in the bonnet of 'public spirited persons'. — *B. Krishna Bhat v Union of India*, (1990)3 SCC 65. [Articles 32, 37 and 47 of the Constitution]

2. Definitions. — In these rules, unless the context otherwise requires. —

- (a) "Act" means, the Karnataka Excise Act, 1965;
- (b) "Foreign liquor" means liquor other than Indian liquor;
- (c) "Form" means a form appended to these rules;
- (d) "Indian liquor" means all liquor defined as Indian liquor in the Act, '[x x x x]';
- (e) "Licence" means a licence issued under these rules;
- (f) "Licensee" means, a person to whom a licence is issued;
- (g) "Year" means the year commencing on the first day of July.

3. Licences. — Licences for the vend of '[Indian Liquor (other than arrack)]' or Foreign liquor or both shall be of the following descriptions, namely. —

'(1) x x x x

The words "other than arrack" omitted by GSR 273, dated 3-8-1972, w.e.f. 4-8-1972. Substituted for the words "Indian Liquor" by GSR 273, dated 3-8-1972, w.e.f. 4-8-1972. Clauses (1) and (1-A) omitted by Notification No. FD 06 PES 2006(7), dated 19-6-2006, w.e.f. 1-7-2006.

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(1-A) x x x x x.]

(2) Retail off shop licences for vend of Indian liquor or Foreign or both not to be drunk on the premises.—Under these licences granted in Form C.L. 2, the sale of liquor in sealed bottles to any person in a quantity less than [0.050 litres] at a time is prohibited.

3(3) x x x x x.]

3(4) Licence to clubs.—The Agent, Secretary or Manager or any other person entrusted with the management of the business of the club shall apply and obtain licence in Form CL-4 from the Deputy Commissioner. The licensee under this clause may open up to four additional counters for serving liquor for the convenience of the members within the licensed premises with the approval of the Deputy Commissioner.

Explanation.—For the purpose of this clause, club means and includes an organisation, run by society, a trust registered under relevant Law or a Company registered under Section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013 or other association of individuals, whether incorporated or not with the object of service motive, providing recreation, cultural, sports, gymnasium and service activities of entertainment.

Provided that no such licence under this clause shall be granted by the Deputy Commissioner, unless the following conditions are satisfied:—

- (1) the club shall have been registered under the Karnataka Societies Registration Act, 1960 or Indian Trust Act, 1882 or under Section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013 for a period of not less than five years and with not less than 100 permanent members;
- (2) It shall have its own land and building or shall have obtained it on lease for a term of eleven years or more;
- (3) It shall have facility for outdoor games like Tennis, Badminton, Volley ball etc., and indoor games like Carrom, Table Tennis etc. and a reading room or a library;
- (4) It shall have adequate facilities for catering food and drinks for the members; and
- (5) It shall have separate toilet with running water facilities for men and women;

Provided further that, existing clubs to whom licences are granted under this clause for the excise year 2001-2002 shall be allowed to renew the licences under the rule existing prior to the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquors) (First Amendment) Rules, 2002.

1. Substituted for the figures and word "0.180 litres" by Notification No. FD 03 PES 2016, dated 28-5-2016, w.e.f. 28-5-2016
2. Sub-rule (3) omitted by CSR 16, dated 6-2-1990, w.e.f. 6-2-1990.
3. Sub-rule (4) substituted by Notification No. FD 7 PES 2018, dated 20-11-2018, w.e.f. 20-11-2018.

Provided also that existing clubs to whom licences have already been granted but are registered under Section 25 of the Companies Act, 1956 or under Section 8 of the Companies Act, 2013 shall also be allowed to renew their licences.]

(5) Occasional licences.—These licences in Form CL-5 are issued for the [sale, serve or sale and serving of liquor] at the refreshment stalls in connection with race meetings, public entertainments and other such public gatherings to be drunk on the premises.

(6) Special licences.—These licences shall be granted in Form CL-6 by the Deputy Commissioner of the district with the previous sanction of the Excise Commissioner, when the circumstances are such as not to allow of the issue of licences of any of the above descriptions, on such terms and conditions and for such periods, as he may on each occasion determine.

[(6-A) Star Hotel Licences.—Licences under this clause shall be granted by the Deputy Commissioner in Form 6-A to Star hotels for possession and sale of liquor. The licensees under this clause may serve liquor to the residents in the rooms and open more than one counter for the convenience of the residents and boarders within the licensed premises with the approval of the Deputy Commissioner.

Explanation.—'Star Hotel' means the hotel recognized as such by the Ministry of Tourism, Government of India.]

[(7) Hotel and Boarding House licences.—

- (a) A licence under this clause shall be applied for and obtained in Form CL-7 from the Deputy Commissioner.
- (b) No liquor under this licence shall be sold to persons other than those accommodated in the licenced hotel and boarding houses and their guests and casual visitors who take meals in such places.]

[(Provided that no licence under this clause shall be granted unless the hotel and boarding house is having a minimum of 5[fifteen double rooms] in the preparation areas and 4[ten double rooms] in other areas:

Provided further that the licences granted under this clause for the excise year 2001-2002 shall be allowed to renew the licences under the rule existing prior to the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquors) (First Amendment) Rules, 2002.]

- Substituted for the words "sale of liquor" by Notification No. FD 01 PES 2017, dated 8-6-2017, w.e.f. 8-6-2017
- Clause (6-A) inserted by Notification No. FD 18 PES 2002, dated 29-6-2002, w.e.f. 1-7-2002.
- Sub-rule (7) substituted by CSR 16, dated 6-2-1990, w.e.f. 6-2-1990.
- Proviso inserted by Notification No. FD 18 PES 2002, dated 29-6-2002, w.e.f. 1-7-2002.
- Substituted for the words "thirty double rooms" by Notification No. FD 16 PES 2017, dated 5-2-2018, w.e.f. 5-2-2018
- Substituted for the words "twenty double rooms" by Notification No. FD 16 PES 2017, dated 5-2-2018, w.e.f. 5-2-2018

[Provided further more that in respect of Hotels and Boarding Houses leased by the Karnataka State Tourism Development Corporation to private persons, firm or companies on renovate, operate, maintain and maintain (ROMT) basis, while granting or renewing the licenses under this clause, the Excise Commissioner may relax the condition regarding the minimum requirement of [fifteen double rooms] in Corporation areas and [ten double rooms] in other areas.]

**4[(7-A) Tourist Hotel Licences.—**These licences may be granted to Tourist Hotels situated in places other than Cities and managed by the Tourism Development Corporation of the State Government or the Central Government for the possession and sale of Indian liquor (other than arrack) or Foreign liquor or both for supply to residents or for removal to their private rooms in the Tourist Hotel in which tourists stay or to non-resident boarders for consumption within a specified area in the licenced premises of the tourist hotel or boarding house set apart by the management for that purpose and approved by the Deputy Commissioner of the District in Form No. CL-14 on such terms and conditions as may be specified in the licence, and on such other conditions as the Excise Commissioner may from time to time specify.]

**5[(7-B) Tourist Hotel Beer Bar Licences.—**These licences may be granted to Tourist Hotels [x x x x] managed by the Tourism Development Corporation of the State Government or Government or Central Government for the possession and sale of beer for supply to residents or for removal to their private rooms in the Tourist Hotel in which tourists stay or to non-resident boarders for consumption within a specified area in the licenced premises of the tourist hotel or boarding house set apart by the management for that purpose and approved by the Deputy Commissioner of the District in Form No. CL-15, on such terms and conditions, as may be specified in the licence, and on such other conditions as the Excise Commissioner may, from time to time specify.]

**6[(7-C) Licence to supply liquor on Board of Train engaged and run by the Tourism Development Corporation of State Government or Central Government.—**(a) A licence under this rule may be granted to the Tourism Development Corporation of State Government or Central Government in Form CL-7C by the Deputy Commissioner, Bangalore Urban District, on the prior sanction of the Excise Commissioner for possession and sale of Indian liquor or foreign liquor or both for supply to the *bona fide* travelers

1. Third proviso inserted by Notification No. FD 2 PES 2004, dated 3-2-2004, w.e.f. 3-2-2004.
2. Substituted for the words "thirty double rooms" by Notification No. FD 16 PES 2018, dated 5-2-2018, w.e.f. 5-2-2018
3. Substituted for the words "twenty double rooms" by Notification No. FD 16 PES 2018, dated 5-2-2018, w.e.f. 5-2-2018
4. Sub-rule (7-A) inserted by GSR 159, dated 19-6-1973, w.e.f. 28-6-1973.
5. Sub-rule (7-B) inserted by GSR 35, dated 6-2-1981, w.e.f. 6-2-1981.
6. The words "situated in places other than cities" omitted by GSR 121, dated 11-9-1981, w.e.f. 13-5-1981.
7. Sub-rule (7-C) inserted by Notification No. FD 01 PES 2008, dated 25-3-2008, w.e.f. 25-3-2008.

traveling in the trains engaged and run by the Tourism Development Corporation of the State Government or Central Government for consumption of liquor within the train during its stay in the limits of the Karnataka State subject to the conditions specified therein the licence.

(b) While applying for licence under this clause, the applicant shall submit application along with the fee specified in Rule 8 and due permission and No Objection Certificate granted by the competent Indian Railway Authorities to serve liquor on board of the train.]

**7[(7-D) Hotel and Boarding House Licences owned by the person belonging to Scheduled Caste and Scheduled Tribes.—**

- (a) A licence under this clause shall be applied for and obtained in Form CL-7D from the Deputy Commissioner;
- (b) No liquor under this license shall be sold to persons other than those accommodated in the licensed hotel and boarding houses and their guests and casual visitors who take meals in such places:

Provided that no licence under this clause shall be granted unless the hotel and boarding house is having a minimum of fifteen double rooms in Corporation areas and ten double rooms in other areas.]

**8[(8) Military Canteen Licences.—**These licences may be granted to military canteens for sale of [Indian Liquor (other than arrack)] or Foreign liquor or both to the members of the armed forces for their use only and shall be in Form CL-8.

**9[(8-A) Military Canteen Stores Bonded Warehouse Licence.—**A licence under this clause shall be in Form CL-8-A and shall be granted by the Excise Commissioner, to establish a military canteen stores bonded warehouse, to import, export and store Indian made liquor (other than arrack) or foreign liquor without payment of excise duty. The licensee shall supply or sell the above liquor only after payment of excise duty to other military canteen stores within the State having CL-8 licence.]

**10[(8-B) Border Security Force or Para Military Forces Licences.—**Licences may be granted in Form CL-8-B to Border Security Forces or Para Military Units for sale of Indian Liquor (other than arrack) or Foreign Liquor or both to the members of Border Security Force or Para Military Units for their personal consumption.]

**11[(9) Refreshment Room (Bar) Licence.—**

1. Sub-rule (7-D) as inserted by Notification No. FD 14 PES 2013, dated 9-6-2014, w.e.f. 9-6-2014 again omitted by Notification No. FD 02 (2) PES 2019, dated 17-12-2019, w.e.f. 18-12-2019.
2. Substituted for the words "Indian liquor" by GSR 273, dated 3-8-1972, w.e.f. 4-8-1972.
3. Sub-rule (8-A) inserted by GSR 152, dated 24-6-1988, w.e.f. 1-7-1988.
4. Sub-rule (8-B) inserted by Notification No. FD 12 PES 95(iv), dated 29-6-1996, w.e.f. 29-6-1996.
5. Sub-rule (9) substituted by GSR 16, dated 6-2-1990, w.e.f. 6-2-1990.

- (a) A licence under this clause, for refreshment room (bar) for sale of Indian liquor combined with the supply of meals or eatables shall be applied and obtained in Form CL-9 from the Deputy Commissioner.

Provided that no such licence shall be granted by the Deputy Commissioner unless he is satisfied that the refreshment room (bar) provided in the following accommodations and facilities.—

- (i) a kitchen with sufficient accommodation either with exhaust fan or proper ventilator. The customers shall not pass through kitchen to go the toilet. Passage to the toilet shall be separate from the kitchen;
- (ii) a separate room (Dining Hall) for serving the liquor along with meals or eatables for consumption. The space in the dining shall be so provided that not more than eight persons shall be accommodated in a built in floor area of 100 Sq. ft. (10x10) with a minimum of four feet space between the tables for the movement of customers and servers. Further, the total area of the Hall/Halls for dining shall not be less than 400 Sq. ft.

Provided that the minimum requirement of 400 Sq. fit. area for dining may be relaxed by the Deputy Commissioner of Excise in case of the licence existing on the dates of the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1993:

Provided further that in case the licensee desired to shift the licence premises to any other premises from the premises in which the licence existing on the date of the commencement of the Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1993, the above provisions shall apply without any relaxation.]

- (iii) adequate seating arrangements;
- (iv) separate toilet with running water facilities for men and women;

- (b) No sale of liquor for removal from the premises shall be permitted under the licence. No liquor shall be sold to persons who have not part taken of meals or eatables served in the licence premises:]

Provided that no licence under this sub-rule shall be granted in any predominantly residential area.]

(10) Auctioner's licences.—(a) These licences shall be in Form CL-10 and shall be applied for and obtained from the Deputy Commissioner of the District

- (b) The licensee may give sample bottles in respect of all consignments whether trade consignments or the property of private persons, in order that intending purchasers may have the opportunity of testing high class wines or spirits at their own houses before the auction sale.

- (c) The licensee is authorised to sell the [Indian liquor (other than arrack)] or foreign liquor or both in less quantities than whole dozens of each description in the case of sales by auction of the property of private parties or estates, or of trade consignments which are alleged or otherwise unmerchantable.
- (d) The licensee is authorised to sell by auction at places specified in the licence.

(11) Distributor licence.—(a) A licence under this clause shall be granted by the Excise Commissioner for the whole of the State or any part thereof to deal in the products of all distilleries or breweries or wineries in the State or to import liquor from outside the State for the purpose of distribution for sale within the State or part thereof or to export liquor outside the State. The licensee shall establish such number of depots in different parts of the State, as the Excise Commissioner may specify in this behalf.

(b) The licence under this clause shall be issued only to such company owned or controlled by the State Government as it may specify.

(c) The licence shall be in Form CL-11 and shall be subject to renewal each year at the discretion of the Excise Commissioner.

(d) The Excise Commissioner may also permit the licensee to sell foreign liquor imported from outside India.]

(11-A) Distributor licence to sell foreign liquor.—(1) A licence shall be granted by the Excise Commissioner for the whole of the State or any part thereof to directly import foreign liquor from outside India or to import foreign liquor from other authorised agencies outside the State of Karnataka but within India for the purpose of distribution of sale within the State of Karnataka, as the case may be.

(2) The licence under this clause shall be issued only to such company owned or controlled by the State Government and which possesses an authorisation or import licence granted by the Government of India to import foreign liquor as specified by the Government.

(3) The licence shall be in Form CL-11A and shall be subject to renewal each year at the discretion of the Excise Commissioner.]

Substituted for the words "Indian Liquor" by GSR 273, dated 3-8-1972, w.e.f. 4-8-1972.  
Sub-rule (11) substituted by Notification No. FD 16 PES 2003(i), dated 30-6-2003, w.e.f. 11-6-2003.  
Clause (11-A) inserted by Notification No. FD 15 PES 2001, dated 4-7-2001, w.e.f. 1-7-2001.

1. Items (i) and (ii) substituted by GSR 74, dated 15-4-1993, w.e.f. 1-7-1993.  
2. Proviso inserted by GSR 74, dated 15-4-1993, w.e.f. 1-7-1993.

[(11-B) Licence to sell confiscated liquor.—(1) A licence under this clause in Form CL-11B shall be granted by the Deputy Commissioner, only to such companies owned or controlled by the State Government and specified by the Government for possession and to sell in retail to any person of the liquor seized or confiscated under the Karnataka Excise Act, 1965 and Rules framed thereunder and found fit for human consumption.]

[(11-C) Retail shop licence issued to Government Companies.—(1) Notwithstanding anything contained in Rule 12, a licence under this clause in Form CL(11-C) shall be granted by the Deputy Commissioner, only to such companies owned or controlled by the State Government and specified by the Government, for possession and sale of liquor in retail shops with a condition that such shops shall be exclusively maintained by them and shall not be transferred and sub-leased to others. Consumption of liquor within the licensed premises shall not be allowed under this category of licence.]

[(12) Licence for retail sale of bottled toddy.—Licence for the retail sale of bottled toddy may be granted with the previous sanction of the Excise Commissioner in Form CL-12 by the Deputy Commissioner of the District on payment of the licence fee specified in Rule 8 and on such terms and conditions as may be specified in the licence and on such other conditions as the Excise Commissioner may, from time to time, specify.

[(13) Arrack depot licence.—The Deputy Commissioner may, with the previous sanction of the Excise Commissioner, grant arrack depot licence in Form CL-13, to a person who has obtained a lease of the right of retail vend of arrack for storage of bottled arrack of the approved sizes affixed with excise labels obtained from the licensed warehouse or Depot, on payment of fee specified in Rule 8, subject to the terms and conditions specified in the licence and on such other conditions as the Excise Commissioner, may specify from time to time.]

[(14) Licence for running duty-free shop at International Airport.—Licence for retail sale of foreign liquor to *bona fide* International Air Passengers transiting the [x x x] International Airport who are required to wait at the airport transit lounge reserved for such passenger before resuming their journey shall be granted with the prior sanction of the Excise Commissioner in Form CL-16 by the Deputy Commissioner of the District on payment of fee as specified in Rule 8 and as such terms and conditions as the Excise Commissioner may specify from time to time.]

1. Clause (11-B) omitted by Notification No. FD 06 PES 2011, dated 1-8-2014, w.e.f. 1-8-2014.
2. Clause (11-C) inserted by Notification No. FD 14 PES 2003(I), dated 30-6-2003, w.e.f. 1-7-2003.
3. Sub-rules (12) and (13) inserted by CSR 273, dated 3-8-1972, w.e.f. 4-8-1972.
4. Sub-rule (13) omitted by Notification No. FD 06 PES 2011, dated 1-8-2014, w.e.f. 1-8-2014.
5. Sub-rule (14) inserted by Notification No. FD 2 PES 2001, dated 22-2-2001, w.e.f. 22-2-2001.
6. The word "Bangalore" omitted by Notification No. FD 3 PES 2008, dated 22-11-2008, w.e.f. 22-11-2008.

[(15) Refreshment Room (Bar) Licence at International Airport.—Licence under this clause, for refreshment room (bar) for sale of Foreign Liquor or Indian Liquor or both, combined with supply of meals or eatables in.—

- (a) an area common for the domestic and international air passengers and *bona fide* users shall be granted in Form CL-17; and
- (b) an area exclusively meant for international air passengers shall be granted in Form CL-18;

at an international airport, by the Deputy Commissioner of the District concerned on payment of a fee as specified in Rule 8 and on such terms and conditions as the Excise Commissioner may specify from time to time.]

#### CASE LAW

R. 3 — Standing Circular No. 141, Para 3(c) — C.L. 2 Licence holder to purchase only from C.L. 1 Licence holder of his district; not permissible to purchase from C.L. 1 Licence Holder outside the district — Explained. — *Mhagyalakshmi Wines Stores and Another v State of Karnataka and Others*, 1989(3) Kar. L.J. 326.

R. 3(2) — As amended by Karnataka Excise (Sale of Indian and Foreign Liquors) (Amendment) Rules, 1997 — Distributor licence — Amendment liberalising grant of — Provision restricting distributorship to company owned or controlled by State Government, validity of which has been upheld by Apex Court, sought to be diluted and water down by making amendment, permitting appointment of more than one distributor for distillery, brewery or winery either for whole or part of State — Amendment made to nullify effect of judgment of Apex Court is liable to be quashed.

*R.P. Sethi, C.J. and A.M. Farooq, J., Held:* In the instant case while upholding the validity of 1989 rules, the Supreme Court rejected all the pleas of the manufacturers and distilleries of the IMFL which have been now made a basis for repealing of the 1989 rules. Upholding the validity of the impugned rules would amount to setting aside of the Apex Court judgment in *Khoday Distilleries* case. What the distilleries and manufacturers of liquor could not achieve in a Court of law, they have clandestinely succeeded to obtain by virtue of the impugned rules. The impugned rules if permitted to remain on the statute book would not only be contrary to the directions of the Supreme Court but would be a negation of the rule of law. The impugned rules have not been referred to any reasonable basis or justification. The impugned rules are not only unconstitutional, illegal, *mala fide*, initiated at the instance of the manufacturers and distilleries of IMFL is conspiracy with some bureaucrats but also against the general public interest resulting in huge losses not only to the State Exchequer but to MSIL, admittedly a public undertaking and a Government Company. — *K.V. Amarnath and Another v State of Karnataka and Others*, 1998(5) Kar. L.J. 62D (DB).

Rule 3(2) — Constitution of India, Articles 226 and 227 — Allegation of selling spurious and adulterated liquors made against licensee — Suspension

1. Sub-rule (15) inserted by Notification No. FD 3 PES 2008, dated 22-11-2008, w.e.f. 22-11-2008.



order of suspension of licence on ground that opinion formed by Deputy Commissioner that licensee was in possession of spurious and adulterated liquor was without basis as the report of chemical analyst does not show anything harmful to consumers in liquor alleged to be spurious and adulterated, seized from licensee — However, in view of fact that opinion formed by authority for suspending licence is based on *prima facie* material and it for that authority to take note of Chemical Analyst's report of enquiry, matter is not one to be interfered with in exercise of judicial power — Direction, however, lies to authority to complete enquiry within 2 months.

**B.S. Patil, J. Held:** This is not a case of cancellation of licence, but suspension of the licence pending enquiry. The opinion formed by Deputy Commissioner, as is evident from the impugned order, is based on *prima facie* material placed before him. What is the effect of the report of Chemical Analyst, is a matter to be taken note of at the time of enquiry. Therefore, the writ petition is dismissed. . . . However, in view of petitioner apprehending that the disposal of the case may get delayed by the Deputy Commissioner, I deem it appropriate to direct the Deputy Commissioner to conduct necessary enquiry and complete the same within a period of two months from the date of receipt of a copy of this order. — *Lalithamma v State of Karnataka and Others*, 2010(1) Kar. L.J. 669.

**Rule 3(2) —** Constitution of India, Articles 226 and 227 — Retail licence — Breach of terms and conditions of — Cancellation of licence for Concurrent finding of fact by three authorities, viz., Deputy Commissioner (Excise), Commissioner of Excise and Tribunal, that illicit liquors were manufactured and smuggled liquors were sold by servants of licensee on licensed premises — Whether to compound offence or to cancel licence is matter of discretion of authority — Where authority has chosen to cancel licence on basis of such finding, decision of authority cannot be interfered with in exercise of writ jurisdiction.

It reveals from the specific finding given by the Commissioner of Excise that it is a fact that the duplicate liquor and the non-duty paid liquor were found in the storeroom belonging to the CL-2 licensed premises. Therefore, to make a distinction that the same was few metres away from the licensee premises does not hold much water. Whether to compound the offence or cancel the licence is the subjective satisfaction of the Deputy Commissioner who is the licensing authority has passed a well-considered order dismissing the appeal filed by the petitioner. The Karnataka Appellate Tribunal also dismissed the appeal holding that as per Section 29, it is very much evident that if any of the servants who is acting on behalf of the licensee either with his express or implied permission, then also the licence is liable to be cancelled or suspended. Therefore, it cannot be held that the servants are responsible for the crime and not the licensee. Section 29(b) of the Karnataka Excise Act gives sufficient powers to the licensing authority to cancel the licence for breach of licence condition. Once the Competent Authorities have recorded a concurrent finding of fact, this Court cannot exercise its

extraordinary jurisdiction under Article 226 of the Constitution of India. At the stage, the petitioner herself has admitted in unequivocal terms in writing that her servant has committed a mistake and she is ready to pay the penalty and the value of the commodity seized. Thereafter, she changed her version and the objections filed to the show-cause notice. . . . Having regard to the facts and circumstances of the case there is no error of law or material irregularity in the impugned orders. — *Smt. Jayamma v The Commissioner of Excise in Karnataka, Bangalore and Others*, 2003(5) Kar. L.J. 272.

**Rule 3(7-D) —** Karnataka Excise Licences (General Conditions) Rules, 1967, Rule 5 — Constitution of India, Articles 226, 227, 14 and 47 — Impugned sub-rule (7-D) of Rules 1968 providing for concessions, reservations to Scheduled Castes and Scheduled Tribes Category of persons, in liquor trade — Petition questioning the vires and validity of such Government Policy — Invidious classification — Held, no evidence statistics or data based on research or study, for forming a reasonable opinion to enact such policy of reservation, produced by the State — Policy giving privilege or extra advantage in liquor trade — Undisputedly amounts to *res extra commercium* — No privilege, fundamental right or protection could be claimed as a matter of right by such category of persons — Impugned rules are also violative, in letter and spirit of State policy, contained in Directive Principles under Article 47 — Further, being contrary to Rule 5 of the Rules enacted by State Government itself — Therefore, the policy creates an invidious classification between persons engaged in the trade — Liable to be struck down as violative of Article 14.

[Writ Petition No. 19788 of 2015 (Excise), DD: 22-7-2016] *B. Govindraj Hegde v State of Karnataka and Others*, 2016(6) Kar. L.J. 76A.

**Rule 3(7-D) —** *Locus standi* of petitioner to question the vires of — Held, the petitioner-Secretary of Federation of Wine Merchants, is in liquor trade and also knowing ins and outs of business — Is in fact, a better position to support such a challenge, rather than simply a stranger or a public spirited person — Therefore, has a right to represent Federation.

[Writ Petition No. 19788 of 2015 (Excise), DD: 22-7-2016] *B. Govindraj Hegde v State of Karnataka and Others*, 2016(6) Kar. L.J. 76C.

**Rule 3(9) —** Bar licence — Cancellation for unauthorised transfer of — Transfer involves parting with ownership of business of running bar for which licence was granted, and transfer becomes unauthorised attracting penalty of cancellation of licence, only if transfer has been effected without previous permission of designated authority and without payment of requisite transfer fee — Act does not contemplate that licensee must himself run bar by being present on premises all time — He is not prohibited from managing business through servant or agent — Power of attorney simpliciter granted to agent to manage business does not amount to transfer of business to agent — Unless there is finding that licensee has divested himself of ownership of business, licence cannot be cancelled — Cancellation of licence in absence of such finding, held; amounts to wrongfully preventing licensee from carrying on her business.

Rule 17 of the Karnataka Excise Licences (General Conditions) Rules provides that the right of retail vend of liquor shall not be transferred by licensee except with the previous permission of the Deputy Commissioner. Rule 17-A provides that in the event of death of the licensee during the currency of the licence, the Deputy Commissioner may, on an application by the legal heirs of the deceased with the previous sanction of the Deputy Commissioner, transfer the licence in their favour. Rule 17-B provides for transfer of licences. It provides that in regard to licences issued for sale of Indian liquor or foreign liquor or both, in Form No. CL-1 or CL-2 or CL-3 or CL-9 under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968, the Deputy Commissioner may on an application by the licensee, subject to payment of transfer fee equivalent to the annual licence fee specified and with the prior approval of the Excise Commissioner, transfer such licence in favour of any person named by such licence, if such person is eligible for grant of a licence. . . . The State has the exclusive privilege and right of manufacturing and selling intoxicating liquor. Grant of a licence is a privilege or permission granted by the State to the licensee to sell liquor in the manner prescribed in the licence. Parting with the possession and control of the business covered by the CL-9 licence would amount to a transfer of such privilege and licence and such an act without the permission of the licensing authority, will be illegal and violative of the terms of the licence. But, if the licensee retains possession and control, but only authorizes a servant or an agent to manage the business on his behalf, there is no illegality or infringement of the conditions of licence. In fact clauses (b) and (c) of sub-section (1) of Section 29 contemplate the business of a licensee being managed by any agent or servant with the express or implied permission or authority of the licensee. . . . A general power of attorney is executed as a matter of convenience. By executing such a power of attorney, the executor [principal] provides for management of his affairs/business/property by the agent. A power of attorney is normally executed when the executant is not personally able to attend to his affairs/business due to absence or illness, incapacity or other preoccupation. The acts of the agent are binding on the principal. In spite of the absence of the principal (executant) granting a power of attorney, the possession and control of the affairs/business remain with the principal. A general power of attorney granted to an Agent to manage the business of the principal does not create any right, title or interest in the asset or business which is the subject-matter of the power of attorney in favour of the attorney holder. Power of attorney is revocable at the will and pleasure of the principal. In short, under a general power of attorney simpliciter [either general or special], there is a mere authority to act unaccompanied by any interest of the agent in the subject-matter of the power of attorney. A common example of such power of attorney is what is granted by a member of family, to another family member to run/manage the business/affairs of the grantor. . . . When companies and firms can apply and obtain licences and run the business through their authorized agents or employees, there is nothing *per se* objectionable about a person giving a general power of attorney to his family member or friend, or an employee to run a Bar and Restaurant. A company or firm or individual may own a club

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and may grant a power of attorney to an agent/employee to look after the day-to-day management and affairs of the licensee every year. Mere execution of a power of attorney by the licensee to a family member or employee or friend, cannot lead to suspension or cancellation of the licence or refusal to grant or renew the licence. . . . .  
Only if it is established that the possession and control of the licensed business has been transferred to someone else, or that the licensee has not exercised any control over the licensed business, or where there is a transfer of possession without permission, the licence will be liable to be cancelled. On the other hand, if the licensee continues to have control of the licensed business, either through a servant or an authorised agent, (that is, the attorney holder) then there is no violation of the terms and conditions of the licence, irrespective of whether the licensee lives in the city/place where the licensed premises is situated. The question of cancellation of the licence will arise, in such a case. . . . In this case, there is no finding that the licensee has parted with the possession of the licensed premises or the control of the business to anyone else, in particular to the power of attorney holder. Nor has the licence been transferred by the petitioner to anyone else. A power of attorney was granted to a family member, even prior to the date the licence was transferred from the name of the petitioner's mother to the petitioner. The petitioner obtained transfer of the licence from the name of her mother to her name by making an application through the said power of attorney holder. Grant of a power of attorney by a licensee to a family member, to manage the affairs or business of the licensee, cannot be considered as parting with the possession or transferring the control or transferring the licence to someone else. The third respondent has completely overlooked this aspect of the matter and has misconstrued the observations of this Court in *Mahabala's case*. . . . Hence, the petition is allowed. Consequently, the petitioner will be entitled to continue her business. She will also be entitled to claim appropriate refund of licence fee in regard to the period during which she has been wrongfully prevented from carrying on her business by the impugned order. — *Geetha v State of Karnataka and Others*, (2012) Kar. L.J. 383.

**Rule 3(9)(a) and 3(9)(b) — Powers of Corporator —** On his representation a liquor shop was ordered to be shifted — Such orders challenged — Both Excise Authorities rejected plea of petitioner — Held, appeal is remanded to the Excise Commissioner and stayed impugned order found at variance-J.

**H.S. Patil, J. Held:** The Deputy Commissioner of Excise, had passed an order permitting the petitioner to shift to the present place imposing a condition that in case any objections were to be raised, the order permitting shifting was liable to be recalled. Accordingly, petitioner moved to the present premises. Respondent 3 herein who is a local Corporator insisted that the petitioner should occupy some other premises. Objections were also raised by the members of the public. A report of the Deputy Superintendent of Police was obtained. Based on the same, Annexure-J — order came to be passed holding that the petitioner has to shift the shop to another suitable

building, in view of the public nuisance likely to be caused and in the interest of public peace. . . . It is thus clear that the Tribunal has misdirected itself in interpreting Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967, in as much as, the restriction contemplated in Rule 5 is that insofar as residential localities are concerned, if such localities are predominantly inhabited by members of Scheduled Caste and Scheduled Tribe, then no licence for liquor shop shall be granted. The Rule cannot be interpreted as to lay down a total embargo for complete prohibition for granting such licence in any residential area. . . . The matter is remanded to the Excise Commissioner for fresh consideration. . . . The Court find it just and appropriate to direct the Commissioner to dispose of the appeal expeditiously, which will be subject to the result of the order to be passed by the Excise Commissioner. Until the disposal of the appeal, the order under challenge Annexure-J shall stand stayed. — S.C. Srinivasa v The Commissioner of Excise in Karnataka, Bangalore and Others, 2013(2) Kar. L.J. 189.

R. 3(11).— There is no manifest arbitrariness in prescribing a distributor licence which can be granted only to a company owned by the State and compelling the manufacturer to sell their product to the distributor.

A distributor licence is prescribed under Rule 3(11). A licence either for manufacture or sale of liquor is prohibited from selling liquor to anyone other than the holder of a distributor licence. The rule provides that a distributor licence shall be issued only to such company owner or controller owned by the State Government as the State Government may specify. A distributor licence, is only a licence to deal in liquor by sale and purchase of liquor. This activity is not something different from what is contemplated under the Act itself or in respect of which the rule making authority has been delegated to the State. The mere fact that a monopoly of distributor licence is sought to be created, does not take the licence outside the ambit of the Act. The Act itself provides that the number of licences can be regulated by the State. If the State chooses to regulate licences by providing that the licence shall be granted only to a company owned by the State, it cannot be said that such a licence is something which is outside the purview of the Act or the rule making authority of the State under the Act. The tests of arbitrary action which apply to executive action do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. Subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable, 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Arbitrariness is on a separate ground since it will come within the embargo of Article 14 and subordinate legislation must be so arbitrary that it would not be said to be in conformity with the statute or that it offends Article 14. Though there is a fundamental right in a citizen to carry on trade or business in liquor, and the State under its regulatory has the power to prohibit absolutely every form of activity in relation to intoxicants, such as its manufacture, storage, import, sale and possession; nevertheless when the State decides to grant

such a right or privilege to others, the State cannot escape the rigour of Article 14. But, while considering the applicability of Article 14 in such a case, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. In view of the inherently pernicious nature of the commodity large measure of latitude should be allowed to the State in determining the policy of regulating manufacture and trade in liquor. Moreover, the grant of licence for manufacture and sale in liquor, would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State has done unless it appears to be plainly arbitrary, irrational or mala fide. It has to be examined whether there is any manifest arbitrariness in prescribing a distributor licence which can be granted only to a company owned by the State; and in compelling the manufacturers to sell their product to the distributor. On the ground that distributor may act arbitrarily or capriciously and may purchase or not purchase liquor at its own sweet-will. Once the rules oblige the manufacturers to supply their product only to the company holding the distributor licence, a corresponding duty is cast on the distributor to place orders with the suppliers concerned whenever demand for a particular product is received by it.

It was also contented that since the first sale will be within the State, a substantial rebate in excise will be lost and the goods manufactured by will become more expensive and will become much less competitive in the outside market. Any concession which is granted by the State for export sales or inter-State sales is a matter of policy. Granting of such concession or absence of such concession cannot make the rule itself manifestly arbitrary or unreasonable or violative of Article 14. All manufacturers and suppliers within the State are governed by the same rules and will, therefore, have to pay the same taxes. All persons who are similarly situated are similarly affected by the amended rules. Therefore, there is no discrimination under Article 14 in its traditional sense. So long as the policy is not arbitrary or wholly unreasonable, it cannot be considered as violative of Article 14. — *State of Karnataka Distilleries Limited etc. v State of Karnataka and Others*, AIR 1996 SC 511.

Rule 3(11)(b) — As amended on 13-9-1989 — 'Companies Act, 1956, Sections 433(e) and 434 — Liquor manufactured in State — Appointment of Government Agency as sole distributor of — Authority given to agency to collect reasonable margins not exceeding 5% of sales — Loss of margin suffered by Agency during stay of operation of rule pending disposal of litigation — Since, under prevalent trade practice and also under Government Order appointing Agency as sole distributor, such margin is payable by vendees of agencies, its claim against manufacturing company, for loss of margin money cannot be enforced, and its petition for winding up of manufacturing Company for not conceding demand is dismissed and not bona fide.

The letter dated 13-11-1989 by which MSIL had been declared as the sole distributor of liquor in the State and it is clearly stipulated therein "that MSIL shall be entitled to charge reasonable margins not exceeding.... 5% on sales

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hardship to run the business and also to eke out their livelihood. Since from time to time, the licence fee would be enhanced/revised, when the margin of profit has been reduced from 20% to 10%, such a revision must be proportionate to the business and the profit thereon. . . . . Further grievance of the petitioners is, there is no provision for grant of fresh licences under Rule 5 of the Rules as per the policy made by the State on 3-9-2003 in not granting any fresh licences. But, subsequently, it has taken a decision to grant fresh CL-2 licences to MSIL, the State owned company. However, once again the answer for this is, the decision of the Apex Court in *M/s. Khoday Distillers Limited's case* and also the decision in *Nashirwar v State of Madhya Pradesh and Others*, AIR 1975 SC 360 : (1975)1 SCC 29, wherein the Apex Court has held that, the State has the exclusive right and privilege of manufacturing and selling liquor. It can auction licences for carrying on business in liquor. . . . . and a citizen has no fundamental right to do business in liquor. . . . . stated that one of the purpose of regulation is to raise revenue to the State. . . . . granting licences to the State owned companies and while exercising a monopoly or privilege, the State felt it proper to give more number of licences to the State owned company to regulate business in liquor. Although a policy was brought in during 2003 to restrict issuance of CL-2 and CL-9 licences however, it shall not bar the issuance of licences in favour of the State owned companies and the business carried on by the State is to earn revenue for the State as limited revenue would be generated in case of private CL-2 or CL-9 licence holders since the margin profit is fixed. For the purpose of generating revenue, when the State has taken a decision to give more number of CL-9 licences to the State owned companies, that cannot be said to be discriminatory or arbitrary and no quota could be fixed for issuance of licences to the Government owned companies by the Commissioner of Excise and it applies only to private individuals. — *B. Martin and Others v State of Karnataka and Others*, 2011(3) Kar. L.J. 16.

3-A. Licensee to purchase liquor only from notified depots of Distributor Licensee.— The Excise Commissioner shall notify from time to time the area of operation and jurisdiction of each Depot of the Distributor Licensee for the purpose of sale of liquor to the licensees whose shops are located in such notified area. Any person holding a licence in Form CL-4, CL-5, CL-6, CL-6A, CL-7, 2[x x x x], CL-9, CL-14 3[or CL-15, CL-17 or CL-18] issued under these rules shall purchase liquor only from such notified depots of the Distributor Licensee.]

4. Application for licence.— 1(1) Any person desiring to obtain. —

1. Rule 3-A substituted by Notification No. FD 06 PES 2006(7), dated 19-6-2006, 1-7-2006.
2. The letters and figure "CL-7D" omitted by Notification No. FD 02 (2) PES 2019, dated 17-12-2019, w.e.f. 18-12-2019.
3. Substituted for the word, letters and figures "or CL-15" by Notification No. FD 3 PES 2008, dated 22-11-2008, w.e.f. 22-11-2008.
4. Sub-rule (1) substituted by Notification No. FD 15 PES 2001, dated 4-7-2001, 1-7-2001.

- (a) a distributor licence or a distributor licence to sell foreign liquor shall make the application to the Excise Commissioner; and
  - (b) any licence other than distributor licence and distributor licence to sell foreign liquor shall make the application to the Deputy Commissioner of the concerned district where the licence has to be sanctioned in Form CL-1A.]
- (2) The application shall contain the following particulars namely. —
- (i) Name and address of the Applicant;
  - (ii) If the applicant is a company or a firm, the names and addresses of all the Directors or partners of the company or firm;
  - (iii) Location of the premises where the applicant intends to conduct the business under a licence;
  - [(iv) If the sale is in more than one district, the names of districts.]
- [(3) x x x x x.]

CASE LAW

**Rules 4 and 5 — Retail shop — Grant of licence in Form CL-2 for running of business under licence must be specified in application, and if premises is found suitable, licence can be granted — Consent of owner of premises, when applicant himself is not owner, is not requirement for grant of licence — Once consent of landlord is obtained for issue of licence, his further consent is not necessary for renewal of licence every year — Licence granted cannot be revoked merely because landlord has chosen to withdraw his consent.**

*V.K. Singhal, J., Held:* The licence has to be granted by the Excise Authorities on the basis of fulfilling the requirements of the Act and the Rules made thereunder. Though the requirement of any consent of the landlord is not specifically there, but for administrative convenience it has been obtained as in the present case. Once the consent is obtained for, thence for the subsequent period it is not necessary that such consent has to be obtained for renewal of licence every year. Grant of licence cannot be regulated by the whim of the owner of the premises. There is no provision under the Act or the Rules for refusal or cancellation of the grant of licence or renewal in a situation when subsequently the landlord changes his mind. The whim of the landlord would not determine the fate of the tenant. The question whether there is a valid lease or tenancy in existence cannot be examined in the proceedings under Article 226 of the Constitution when a suit is also pending. The right of the tenant does not come to an end automatically with the termination of lease/tenancy. In these circumstances, there is no case made out for interference under the extraordinary jurisdiction under Article

Clause (iv) of sub-rule (2) inserted by GSR 344, dated 14-10-1976, w.e.f. 28-10-1976.  
Sub-rule (3) omitted by Notification No. FD 03 PES 2015, dated 28-5-2016, w.e.f. 28-5-2016

within the State". Reasonable margin is a margin which the distributor collects from the person to whom he sells. It is thus clear that MSIL could collect margin money from the wholesalers and retailers to whom liquor was sold. The Company is a manufacturer of liquor and MSIL was not selling liquor to it. MSIL itself clearly understood the Government letter to mean that margin money was payable to it by the wholesalers. MSIL in its letter dated 4-5-1993 addressed to the Company made a grievance that the latter was giving direct supplies of liquor to the wholesalers which acted as a deterrent on the wholesalers from purchasing liquor from MSIL because they had to pay 5% more. . . . The claim made by MSIL against the Company on the basis of the Government letter dated 13-11-1989 is clearly misconceived and not *bona fide*. No amount could be recovered from the Company on the basis of this letter. If at all any amount could be recovered on the basis of that letter it could be only from the wholesalers and retailers to whom liquor had been sold. . . . The amount claimed by MSIL is also disputed on the ground that per the trade practice which is followed consistently, the margin money payable by the wholesalers/retailers to whom liquor is sold and it is not paid by the manufacturer. If such a practice is prevalent, no amount is payable by the Company. Whether such a practice is prevalent or not is a matter of evidence and in the very nature of things such issues could not be decided on summary proceedings in a winding up petition. — *Mysore Sales International Limited, Bangalore v United Breweries Limited, Bangalore, 2005(6) Kar. L.J. 615B (DB)*.

**Rule 3(11)(b)** — As amended on 13-9-1989 — Companies Act, 1956 Sections 433(e) and 434 — Liquor manufactured in State — State Government appointing Agency as sole distributor of — Authorisation given to Agency to collect reasonable margin money on sales effected by it — Petition filed by Company manufacturing liquor challenging validity of amended Rule and order of Apex Court upholding its validity and directing manufacturing Company to make good loss of margin money suffered by Agency — Account of stay of operation of amended Rule pending disposal of litigation — Order of Apex Court is order *in personam* which is enforceable only against Company which was party to litigation, and not order *in rem*, enforceable against other companies who were not parties to litigation — Held: Company which was not party to litigation cannot be wound up for making good loss suffered by Agency on account of stay of operation of amended Rule.

The interim order passed by the Supreme Court was not an order *in rem* but it was an order *in personam*. It is true that when the operation of the Rule was ordered to be stayed during the pendency of the appeals in the Supreme Court the Company and several others took advantage of the same, even though they were not parties before the Supreme Court because the authorities had been restrained from giving effect to the Rules and because the order was passed *in rem*. When the authorities did not implement the Rules, the benefit accrued to all and sundry but the conditions which were imposed by the Supreme Court while granting the interim order were operative only between the parties and not on others. Only *Khanna*

*Distilleries Limited* and others who were parties before the Supreme Court were bound by those conditions and may be they were required to pay margin money/commission to MSIL in terms of the directions contained in para 21 of the judgment in *Khoday Distilleries* case. The Company which was not a party before the Supreme Court was neither required to maintain its accounts nor was it required to supply a copy of the same to MSIL and nor was it required to pay any amount thereunder to MSIL. Therefore, MSIL could not make a claim for the payment of any money from the Company on the basis of the interim order or the final order passed by the Supreme Court in the aforesaid cases. — *Mysore Sales International Limited, Bangalore v United Breweries Limited, Bangalore, 2005(6) Kar. L.J. 615C (DB)*.

**Rule 3(11)(c)** — Constitution of India, Articles 226 and 227 — Writ petitions filed praying to strike down Rule 3(11)(c) as amended by Notification dated 30-6-2003 as illegal and unconstitutional — Held: — Sale of liquor is neither a fundamental right nor a question of arbitrariness which can be questioned — When State intends to promote business through organised sectors, companies owned by the State, the granting of licences to MSIL cannot be held to be arbitrary — With regard to fixing of exorbitant fee in respect of private dealers, Government directed to consider representations of petitioners and to take decision to maintain uniformity in the matter of charging licence fee between private owners and the Government owned companies.

*Huluvadi G. Ramesh, J., Held:* In view of the legal position and also, since it is settled in various other cases that sale of liquor is neither a fundamental right nor a question of arbitrariness which can be questioned, and also when the State intends to promote business through organised sectors namely, the companies owned by the State, the granting of licences to the MSIL cannot be held to be arbitrary and, the rule enabling grant of some more licences in the interest of public health or general order and thereby, grant of some more CL-2 licences through MSIL, cannot be held to be bad. . . . Insofar as charging of licence fee as per Rule 8 of the Rules is concerned, of course, in the case on hand, for CL-2 licence it is charged at Rs. 1 lakh for MSIL, i.e., State owned company's licence holders, whereas, for individual licensees it is being charged at Rs. 7 lakhs and odd within the City Municipal Corporation. The procedure adopted by the State does not stated to reason as to why such a licence fee has to be enhanced when both CL-2 private licence holders as well as State owned companies are to run similar business and also when simultaneously, by a Rule, it has fixed the minimum margin profit of 10% from 20% which was fixed earlier. In the circumstances, it is for the State to reconsider the charging of licence fee to various places as indicated in Rule 8 and it is for the petitioners to give representations to the Government so that the Government shall take decision to maintain uniformity in the matter. It is not that the private dealers would take over the public company business, as such, there is no rationale in fixing exorbitant fee in respect of private dealers. However, without quashing the rules framed in 2007, the Government shall consider the representations of the petitioners to maintain uniformity in the matter of charging licence fee since it appears to be causing