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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

(32)

+ LPA 333/2025, CM APPL. 30727/2025 & CM APPL. 30728/2025
JASMEET SINGH SETHI

(33)

+ LPA 334/2025, CM APPL. 30732/2025 & CM APPL. 30733/2025
RAVINDER PAL SINGH

(34)

+ LPA 335/2025, CM APPL. 30735/2025 & CM APPL. 30736/2025
PIONEER GEL PVT LTD

(35)

+ LPA 336/2025, CM APPL. 30738/2025 & CM APPL. 30739/2025
MANJIT SINGH

(36)

+ LPA 337/2025, CM APPL. 30740/2025 & CM APPL. 30741/2025
VRINDAVAN APPARELS PVT. LTD

(37)

+ LPA 338/2025, CM APPL. 30743/2025 & CM APPL. 30744/2025
HARVINDER AND COMPANY

(38)

+ LPA 339/2025, CM APPL. 30756/2025 & CM APPL. 30757/2025
RADINTON TRADEX PVT LTD

(5)

+ LPA 283/2025, CM APPL. 26285/2025 & CM APPL. 26286/2025
BERCH HOLDINGS PVT LTD

(6)

+ LPA 284/2025, CM APPL. 26408/2025 & CM APPL. 26409/2025
FORTUNE HEALTH CARE



- (7)
+ LPA 285/2025, CM APPL. 26413/2025 & CM APPL. 26414/2025
ALVIRA REALTY SERVICES PVT LTD
- (8)
+ LPA 286/2025, CM APPL. 26422/2025 & CM APPL. 26423/2025
KASHISH MANAGEMENT AND SERVICES PVT LTD
- (9)
+ LPA 287/2025, CM APPL. 26427/2025 & CM APPL. 26428/2025
EXPO MEDIA DEVELOPERS PVT LTD
- (10)
+ LPA 288/2025, CM APPL. 26460/2025 & CM APPL. 26461/2025
SHARDA PIPES PVT LTDAppellants
versus
GOVERNMENT OF NCT OF DELHI & ANRRespondents

Advocates who appeared in this case:

- For the Appellants : Mr. Arun Maitri, Ms. Radhika Chandrashekhar
and Mr. Arnav Mudgal, Advocates.
- For the Respondents : Ms. Vaishali Gupta, Panel Counsel (Civil)
GNCTD in LPA 333/2025, LPA 334/2025 &
LPA 338/2025.
Mr. Sumit K Batra, Advocate for GNCTD in
LPA 283/2025 & LPA 287/2025.

Date of Decision: 20th May, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)



1. The present batch of Letters Patent Appeals have been filed assailing the common judgment dated 28.03.2025 passed by the learned Single Judge dismissing a batch of writ petitions bearing W.P.(C) 721/2025 and connected matters filed by the appellants herein, seeking directions to the respondents to issue licenses for retail/sale of liquor to private retail vendors. While dismissing the underlying batch of writ petitions, liberty was granted to the appellants to make appropriate representation to the government, to be duly considered in accordance with law.
2. The appellants before us are private retail vendors who were issued L-10 licences with validity upto 30.09.2021 by the respondents under the erstwhile Delhi Excise Policy 2020-21 (hereinafter referred to as '*old Excise Policy*') for retail vending of Indian and Foreign liquor in Delhi. The New Excise Policy came into effect on 10.09.2021, however owing to the alleged irregularities in the framework and implementation of the new Excise Policy, the same was subsequently scrapped and the old Excise Policy was revived by the notification/order no.(9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022.
3. Thereafter, the appellants approached the respondents by making various representations, asserting that since the respondents have decided to revert back to the old Excise Policy, in terms thereof, the appellants fulfilled the eligibility criteria for grant of a license. However, no response was received from the respondents, constraining one of the appellants herein to file a writ petition bearing W.P.(C) 10927/2024 before this Court. *Vide* order dated 07.08.2024, this Court directed the respondents to expeditiously respond to the representation of the



petitioner therein, clearly specifying whether the petitioner therein is eligible for grant of a license as per the notification dated 01.08.2022.

4. In compliance with the aforesaid order, the respondents *vide* communication/letter dated 03.09.2024 responded to the queries raised by the appellants, denying allegations of arbitrariness in issuance of the licenses and observed that the notification dated 01.08.2022 clearly contemplated that only licenses which were in effect till 16.11.2021 are liable to be renewed, and that a bare reading of the order dated 10.09.2021 clarifies that L-7 and L-10 licenses were not operational at the said cutoff date. Furthermore, the respondents also stated on record that as on the date of the aforesaid reply, in the State of NCT of Delhi, no private liquor vend was operational and the liquor vends were operational only through four government corporations.

5. Aggrieved thereof, the appellants filed the underlying writ petitions for issuance of liquor licenses to the appellants/private retail vendors under the Delhi Excise Policy notified *vide* notification dated 01.08.2022. However, *vide* the impugned common judgement dated 28.03.2025, the learned Single Judge dismissed the claim of the appellants on three counts, **(i)** that as per the ratio laid down by the Constitution Bench of the Supreme Court in *Khoday Distilleries Ltd. & Ors. vs. State of Karnataka & Ors., (1995) 1 SCC 574*, a citizen has no fundamental right to trade or business in liquor as it squarely falls within the purview of '*res extra commercium*'; **(ii)** there is no mandatory legal imperative that the extant policy of the government must enable/provide for licenses to be issued in favour of private parties; and **(iii)** that while exercising the jurisdiction under Article 226 of the Constitution of India,



the Court cannot impinge upon the executive decision making power of the Government or to sit in judgment over any policy, unless the same is manifestly arbitrary, unconstitutional and violative of the fundamental rights. While dismissing the underlying batch of writ petitions, a liberty was also granted to the appellants to move appropriate representation to the government, for due consideration in accordance with law.

6. Mr. Arun Maitri, learned counsel for the appellants submits that as per the old Excise Policy of 2020-2021, which continued till 30.03.2021/16.11.2021, the licences for sale of liquor were required to be given to private retail vendors as well as to the government corporations. However, the respondent no.1 started issuing licences only to government sponsored vendors such as DSIIDC, DTDC, Delhi State Civil Supplies Corp. Ltd., Delhi Consumer's Co-op. Wholesale Store Ltd. etc., causing grave discrimination against the private retail vendors. He contends that in the past, neither has a policy ever discriminated/disallowed private retail vendors to obtain a licence for selling liquor nor empowered the government to either monopolize the liquor trade or prohibit a private vendor from running a liquor shop.

7. Moreover, it is stated that the rights of appellants for doing business in liquor trade as a private retail vendor stands protected by a judgment of the Supreme Court in *Krishna Kumar Narula etc. vs. State of Jammu and Kashmir & Ors., 1967 SCC Online SC 125* wherein it has been held that “*dealing in liquor is a business and citizen has a right to pursue business in the said commodity*”. He states that unilateral enforcement of the old Excise Policy to the extent it serves the purpose of respondents is not only violative of the appellants’ rights under



Articles 14 and 19(1)(g) of the Constitution of India but is also in contravention of the notification dated 01.08.2022 whereby the respondents have categorically decided to revert to the policy which was existing before the implementation of the new Excise Policy.

8. Learned counsel for the appellants further submits that since the notification dated 10.09.2021 was neither notified as an 'Excise Policy' nor any Public Notice was issued pertaining to the same by the respondents, the said notification cannot be given the status and meaning of an 'Excise Policy', and at the most, can be construed as an executive/administrative order which was issued at that time for enforcement of the new Excise Policy. Reliance is placed on para 64 of the judgement of the Supreme Court in *Khoday Distilleries Ltd. (supra)*.

9. Learned counsel appearing for the respondents have refuted the submissions addressed on behalf of the appellants and supported the reasons rendered by the learned Single Judge in the impugned judgement. In unison, learned counsel submits that the appellants do not have any right to trade in liquor as envisaged in Article 19(1)(g) of the Constitution of India and as settled by the Supreme Court. They contend that the State has absolute monopoly over such matters and it is not for the appellants to direct or suggest as to how the State would conduct its affairs, particularly in the trade under the liquor policy. They pray that the present appeals be dismissed.

10. The issue raised by the appellant in the present case is no more *res integra* with the line of judgments from *Khoday Distilleries Ltd. (supra)* to *Uga Sugar Works Ltd. vs. Delhi Administration & Ors., (2001) 3 SCC 635; State of Bihar vs. Nirmal Kumar Gupta, (2013) 2 SCC 565;*



State of T.N. vs. K. Vinayagamurthy, (2002) 7 SCC 104; State of Punjab vs. Devans Modern Breweries Ltd., (2004) 11 SCC 26; State of Kerala vs. Kandath Distilleries, (2013) 6 SCC 573; State of Tamil Nadu vs. K. Balu & Anr., (2017) 2 SCC 281 etc.

11. The law as enunciated in *Khoday Distilleries Ltd. (supra)* holds the field till date and is *stare decisis*. It would be apposite to extract para 60 of *Khoday Distilleries Ltd. (supra)* which reads thus:-

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 practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all 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 maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.



(j) *The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.*

(k) *The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.*

(l) *Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.*

(m) *The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.”*

(emphasis supplied)

12. The following legal principles emerge from the aforesaid enunciation of law by the Supreme Court, namely, (i) the trade in liquor is considered as ‘*res extra commercium*’; (ii) since trade in liquor is ‘*res extra commercium*’, a citizen therefore has no fundamental right to do trade or business in liquor; (iii) the State has an absolute right to create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor and also licenses to the citizen for the said purpose by charging fees, which can be done under Article 19(6) of the Constitution of India or even otherwise; and; (iv) 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.

13. Therefore, it appears from the submissions addressed by the learned counsel for the appellants that they are under some misconception of law or even of fact. The fundamental fallacy in the argument of learned counsel for the appellants is that they have a right to trade in liquor under Article 19(1)(g) of the Constitution of India. In view of *Khoday Distilleries Ltd. (supra)*, that perception is ill founded and is accordingly rejected. Learned counsel for the appellants has been unable to show any judgment of the Supreme Court taking any other alternative view than what has been rendered by the Supreme Court in *Khoday Distilleries Ltd. (supra)*. The judgement of the Supreme Court in *Krishna Kumar Narula etc. (supra)* relied upon by the appellants was considered by the Supreme Court in *Khoday Distilleries Ltd. (supra)* in para 61 and upon such appreciation, the law in respect of liquor trade as ‘*res extra commercium*’ was enunciated. Therefore, no reliance can be placed upon the said judgement in that regard. Thus, the submission of violation of right to trade as envisaged in Article 19(1)(g) of the Constitution of India is unmerited.

14. So far as the argument of learned counsel for the appellants that the notification dated 10.09.2021 issued by the respondents not being a policy but an executive fiat and thus cannot override the Excise Policy as was in existence before the new regime was introduced under the Excise Policy of the year 2020-21, premised on Article 13(3)(a) of the Constitution of India is concerned, we are unable to accede to the said submission. While relying upon the said Article, learned counsel for the



appellants drew our attention to para 17 of the impugned judgment wherein para 64 of *Khoday Distilleries Ltd. (supra)* was extracted. Referring to the observations contained in para 64 of *Khoday Distilleries Ltd. (supra)*, learned counsel for the appellants submits that the notification dated 10.09.2021 does not fall within the definition of “law” as contained in Article 13(3)(a) of the Constitution of India and therefore, the same cannot override the rights conferred upon the appellants under the erstwhile policy existing prior to the Excise Policy, 2020-21. Consequently, the rights of the appellants to do trade or business in liquor get automatically revived which cannot be denied by the State under the garb of the notification dated 10.09.2021.

15. The said contention has been noted only to be rejected. Article 13 (3)(a) of the Constitution states that the law includes “*any ordinance, order, by law, rules, regulation, notification, custom or usage having in the territory of India, the force of law*”. The Supreme Court in *Khoday Distilleries Ltd. (supra)*, particularly para 64, while noting the provisions of the aforesaid Article also observed that clauses (2) to (6) of Article 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g), the caveat being such instrument not being violative of any provisions of the Constitution. Apart from the above, it was further observed that the trade or business in portable liquor is a trade or business in *res extra commercium* and hence, can be regulated and restricted even by an executive order, provided it is issued by the Governor of the State. Thus, the notification dated 10.09.2021 would not



fall foul of Article 13(3)(a) of the Constitution of India, rather squarely fall within its ambit. Having regard to the ratio laid down by the Supreme Court in respect of an executive order too, the submissions of the appellants is clearly contrary to the law laid and thus are unmerited.

16. From the aforesaid conspectus of the law, it is clear that the Courts would not interfere in matters like the one before us on the touchstone of violation of Article 19(1)(g) of the Constitution. It may possibly be in a given case, a violation under Article 14 of the Constitution may still have to be considered by the Courts under Article 226 of the Constitution. However, in the present case, even that question does not arise for the reason that the respondents have admittedly created a monopoly in itself and through the agencies created by it for the purposes of sale and distribution of the liquor. This exercise and action of the State is clearly protected by the ratio laid down in *Khoday Distilleries Ltd. (supra)*. Thus, on this count too, the submissions of the appellants are fallacious and unmerited.

17. The Supreme Court in *Khoday Distilleries Ltd. (supra)* also clearly held that a citizen has no fundamental right to trade or business in liquor. Having regard thereto, it can be conferred that the appellants have no indelible right to trade or conduct the business in liquor.

18. We have examined the impugned judgment of the learned Single Judge, who has examined the issue in great detail, and have no reasons whatsoever to disagree or take a divergent view, keeping in view the unquestionable ratio laid down by the Supreme Court in a catena of judgments noted above.

19. In that view of the matter, the appeals have no merit and dismissed



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in limine, at the admission stage itself, along with pending applications, with no order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 20, 2025/ms/rl