B. Govindraj Hegde Vs State of Karnataka

Court: KARNATAKA HIGH COURT

Date of Decision: July 22, 2016

Acts Referred: Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 â€" Rule 3(7 D)
Karnataka Excise Licences (General Conditions) Rules, 1967 â€" Rule 5

Citation: (2016) 6 KantLJ 76 : (2016) 3 KCCR 340

Hon'ble Judges: Vineet Kothari, J.

Bench: Single Bench

Advocate: Sri Mohan Bhat, Advocate, for the Petitioner; A.G. Shivanna, Additional Advocate General for V. Sreenidhi, Additional Government Advocate and H. Anantha, Government Pleader, for the Respondent Nos. 1 and 2; Jayakumar S. Patil, Senior Counsel for Pavan G.N

Final Decision: Allowed

Judgement

(a),City Municipal Corporation areas having population more than 20 lakhs,"Rs. 6,60,000 per year

(b),Other City Municipal Corporation areas,"Rs. 5,80,000 per year

(c),City Municipal Council areas,"Rs. 4,30,000 per year

(d),Town Municipal Council/Town Panchayat areas,"Rs. 3,64,000 per year

(e),Other areas,"Rs. 2,80,000 per year

Office of the Deputy Commissioner,Deputy Commissioner,

.....District.,".....District"".",

or a class for giving the liquor selling licence to such category of persons. Citing various case-laws with emphasis, Mr. Mohan Bhat urged that,",,

firstly, the State had stopped giving CL 2 and CL 7 licences long back in the year 1994 itself and in its own wisdom, it had considered appropriate",,

not to allow free-flow vending of liquor in hotels and bars of a particular size viz., having 20 double bedded rooms and a restaurant to serve food",,

with liquor to their in house guests. Mr. Mohan Bhat also submitted that Article 47 in Part IV of the Constitution of India containing Directive,,

Principles mandates that the State shall endeavour to bring about prohibition of intoxicating drinks and drugs, which are injurious to health and",,

while Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967 also provides for restriction in respect of location of a liquor",,

shop, inter alia, in a residential colony where the inhabitants predominantly belong to SC/ST or within a distance of 220 meters from the middle of",,

State Highways or National Highways, contrary to that, the impugned amended sub-rule (7-D) introducing the new category of CL-7D licences, is",,

going to precisely hit the opposite target.,,

6. Also relying upon the decision of the Hon"ble Supreme Court in various cases holding that the trade in liquor is res extra commercium and there,,

is no fundamental right of carrying on the said trade by the licensees, Mr. Mohan Bhat urged that under the guise of CL-7D licence to the persons",,

belonging to SC/ST category, the State is encouraging not only dubious investments by other classes of persons or liquor barons in the name of",,

these backward class people as benamis but by unduly relaxing the conditions for hotels and lodges set up by them with half of the capacity as is,,

required by other general category of persons or licensees, the State has created an invidious classification hit by Article 14 of the Constitution of",,

India. The State has also added a category of casual visitors coming to take meals in such Hotels and Restaurants owned by such SC/ST category,,

of licensees, which would result in mushroom and uncontrolled growth of such licensees around the State and National and State Highways and",,

thus, defeat the very purpose of enacting the restriction in Rule 5 of the General Conditions Rules, 1967. He vehemently also submitted that the",,

increase in public revenue by trade in liquor is no ground to sustain such an impugned Rule and the so-called economic empowerment or upliftment,,

of backward classes of SC/ST category in the impugned Rules is nothing but a ruse to expand this trade for persons with vested interest.,,

7. Mr. Mohan Bhat for the petitioner also made a point with reference to Rule 12 of the Karnataka Excise (Sale of Indian and Foreign Liquors),,

Rules, 1968 which provides for the maximum number of licences to be granted in an area to be fixed by the Excise Commissioner with the",,

previous approval of the State Government, from time to time. Relying upon the Division Bench decision of this Court, he also argued that the",,

impugned Rules in the form of CL-7D licence relaxing the condition of Rules 3 and 8 of the 1968 Rules without fixing any cap limit as is the,,

mandate of Rule 12(1) quoted below, the State is opening a flood gate for issuance of such licences in the name of persons belonging to SC/ST",,

category. He also urged that the State has neither undertaken any study or research of relevant data for justifying this policy decision to amend the,,

Rules nor it has made any study or research as to how much revenue they would be earning for their so-called upliftment before thoughtlessly,,

introducing the said Rules on the Statute Book. He therefore, prayed that the impugned notification dated 9-6-2014 notifying sub-rule (7-D) in",,

Rule 3 and providing for new category of licence CL-7D deserves to be struck down by this Court as violative of Article 14 of the Constitution.,,

Rule 12(1) is quoted below for ready reference:,,

12. Number of licences to be fixed.-",,

(1) The maximum number of licences to be granted in an area shall be determined from time to time by the Excise Commissioner with the previous,,

approval of the State Government.""",,

8. Learned Counsel for the petitioner-Mr. Mohan Bhat also raised an argument that the Constitution of India, in Articles 15 and 16, provide for",,

reservation for backward classes in only two spheres viz., education and public employment. The business of liquor while undisputably is res extra",,

commercium, cannot fall in either of the protections for such reservation under the said Articles. The State cannot be permitted to provide for such",,

reservation carving out a class for a business for which no privilege or protection can be claimed by any person. Therefore, this classification in the",,

form of impugned Rules is devoid of any rational nexus with the object of the Act which is undoubtedly regulation of trade in liquor and it,",,

therefore, cannot be said to be a reasonable classification saved under Article 14 of the Constitution.",,

9. On the other hand, learned Additional Advocate General as well learned Counsel for the interveners vehemently submitted, taking the Court",,

through the data compiled and produced before this Court as Annexures-R1 to R3 with the additional statement of objections giving district-wise,,

population of the State including the total population of SC/ST category in all the 30 Districts of the State of Karnataka as per 2011 census and,,

the number of licences given under various categories from CL-2 to CL-15 in Annexure-R2 as on 31-1-2016 and number of licences issued to,,

SC/ST population in various categories in Annexure-R3, to show that the number of licences given to SC/ST category of persons so far is a",,

minuscule percentage of the total number of licences issued to all licensees taken together and therefore, the State in its own wisdom, considered it",,

expedient and necessary, for economic empowerment and upliftment of persons belonging to backward classes like SC/ST category, to provide",,

them an avenue for earning their livelihood and revenue. Therefore, these licences of excise under category CL-7D by the amended Rules notified",,

on 9-6-2014 are perfectly in conformity with Article 14 of the Constitution. Learned Additional Advocate General also submitted that such,,

protection given to reserved category of persons is in the realm of public employment also and therefore, a class created for such backward",,

people is permissible classification protected under Article 16(4) of the Constitution of India.,,

10. Rebutting the contentions of learned Counsel for the petitioner about not fixing the limit of number of (7-D) licences under Rule 12 of the,,

General Conditions Rules, the learned Counsel for the State and interveners also urged that Rule 12 firstly, is not mandatory and it permits the",,

State to determine such maximum number of licences from time to time, as the situation emerges and if considered expedient by the State to fix",,

such a limit. They also urged that the limit of such licensees based on the population figure applies only to category CL-2 licence and it does not,,

apply to the present category" of CL-7D licence and therefore, the contention of the petitioner in this regard is fallacious and deserves to be",,

rejected.,,

11. They also questioned the very locus standi of the present petitioner to challenge the impugned Rules for business competition reasons as the,,

petitioner, admittedly, represents the Federation of Excise Licensees and the members of tire petitioner-Association own CL-2 (Retail shop",,

licences) and CL-7 licences (Hotel and Boarding House licences) themselves and therefore, to avoid competition that is likely to come from the",,

new" category of licences in CL-7D, they are seeking to stall and avoid the same by filing the present writ petition for extraneous reasons and that",,

cannot be permitted.,,

12. They have also opposed the submission of the petitioner on the anvil of Rule 5 of the Rules of 1968 and urged that the said restriction on Rule,,

5 will equally govern and apply to the impugned CL-7D licences also and therefore, there is no conflict between the two Rules and thus, the",,

impugned notification is a perfectly valid piece of subordinate legislation and the same deserves to be upheld by this Court. They also contended,,

that there is a strong presumption about the constitutionality of any legislation including the subordinate legislation and in the absence of any,,

contrary material laid by the petitioner before this Court, writ petition filed by the petitioner is without any merit and the same deserves to be",,

dismissed. They also relied upon certain case-laws which are discussed below.,,

13. In Khoday Distilleries Limited and Others v. State of Karnataka, (1995) 1 SCC 574, a Constitution Bench of the Hon"ble Supreme",,

Court, while upholding the validity of the AP (Regulation of Wholesale Trade, Distribution and Retail Trade in Indian Liquor and Foreign Liquor,",,

Wine and Beer) Act, 1993, repelled the challenge to the vires and summarised the legal position with regard to right to carry" on trade or business",,

in potable liquor in the following manner:,,

(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 19(1)(g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed",,

under the Constitutions of the other civilised countries are not absolute but are read subject to the implied limitations on them. Those implied,,

limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.,,

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on",,

an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to",,

carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety",,

and welfare of the general public, i.e., res extra commercium (outside commerce). There cannot be business in crime.",,

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which",,

is res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade",,

or business in liquor can be completely prohibited.,,

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the,,

standard of living of the people and improvement of the public health. It, therefore, ordains the. State to bring about prohibition of the consumption",,

of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the 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."""",,

14. The aforesaid judgment was relied upon by both the sides Counsel with their different shades of argument as noted above and there was no,,

dispute about the principles laid down by the Constitution Bench in the aforesaid case about the liquor trade being res extra commercium (outside,,

commerce) and that it being a pernicious trade, cannot be claimed to be a fundamental right and therefore, the State could have a monopoly of",,

trading in liquor. The Court also considered Article 47 of the Constitution of India that intoxicating drinks and drugs are injurious to health and,,

impede the raising of level of nutrition and standard of living of people and thus, upheld the power of the State to completely prohibit the",,

manufacture, sale, possession, distribution and consumption of potable liquor in the said judgment.",,

15. The Division Bench of this Court in the case of Nagaraju v. State of Karnataka and Others, 1999 (4) KLJ 668, relied upon by the",,

petitioner for the argument on the basis of Rule 12, held in para 10 as under:",,

Therefore, in view of the above circumstances, we think it is just and appropriate to direct respondents 2 to 4 first to determine how many licences",,

have to be granted in a year before issuing licences based on the population and probable demand of the area; whether in a given place there is,,

increase in the grant of licences because of increase in population or increase in demand, has to be taken into consideration while issuing licences.",,

If they have issued more licences in violation of Rule 12 of the Rules, the concerned authority has to take action for cancelling such licences after",,

considering the representation of the concerned person.,,

Mr. Mohan Bhat, for petitioner submitted that unless the maximum limit of Rule 12 is first fixed, the licences even cannot be permitted to be",,

granted and the Division Bench even struck down the excess number of licences given beyond the cap limit fixed under Rule 12 and thus, the said",,

Rule is of a mandatory nature.,,

16. In State of Kerala and Others v. Unni and Another, (2007) 2 SCC 365, in para 32, which was relied upon by the learned Counsel for the",,

petitioner with great emphasis, the Hon''ble Supreme Court held that by the reason of rule making power of the State, if the State imposed any",,

such condition under Kerala Abkari Act, such a condition should be reasonable and it should be based on deeper study undertaken by the State of",,

the relevant facts. It was also held that a subordinate legislation does not enjoy the same degree of immunity as a legislative Act would and for,,

which proposition, a previous decision in the case of Vasu Dev Singh v. Union of India, (2006) 12 SCC 753, was relied upon by the Court.",,

17. The Division Bench of this Court in State of Karnataka and Others v. Basavaraj Nagoor and Others, ILR 2000 Kar. 870 dealing with",,

a case of public employment, quashed Rule 3-B of the Karnataka Civil Services (General Recruitment) Rules, 1977 which provided for giving a",,

weightage of marks to rural candidates as against the urban candidate and held as under:,,

Even the impugned Rules, examined from any angle, will not stand to judicial scrutiny. The reservation for the Scheduled Castes, Scheduled",,

Tribes and Other Backward Classes is provided as per the mandate of Article 16 of the Constitution of India and by virtue of Section 4 of the,,

Karnataka State Civil Services Act. As per Rules, reservation is provided for Scheduled Castes, Scheduled Tribes and Backward Classes. The",,

reserved candidates who appear in the qualifying examination or interview obtain marks and a merit list is prepared. If they come according to,,

merit in the open quota, they are appointed in the open quota itself. If according to merit, they are not able to come in the open quota, then they",,

will be accommodated in the reserved quota irrespective of whether they are from rural area or non-rural area. But, by adding 10% of marks to",,

the rural candidates, the urban backward classes, Scheduled Castes and Scheduled Tribes are deprived to get the appointment though they got",,

similar marks or more marks and merit is given a go-by. This, in other words, amounts to further classification or mini-classification, which is",,

impermissible and violative of Article 14 of the Constitution.,,

The State has not placed any material on record to show that they have made any comparative study regarding the schools in the rural areas, their",,

standard of education, teaching methods, etc. In some of the writ petitions, it is specifically stated that some of the schools in rural areas have more",,

standard than the schools in non-rural areas, which are mentioned in the Schedule to the notification. It is a well-known fact that even in urban",,

areas, the education standard of children of hut dwellers and other economically and socially backward classes is not of same standard as of the",,

rural area. Therefore, giving of 10% of marks to rural candidates will cause a great hardship to the urban poor and middle class and eliminate the",,

merit candidate, which is contrary to the spirit of Articles 14 and 16 of the Constitution of India.",,

On a careful consideration of the impugned rules, we are of the considered view that they are violative of Article 14 of the Constitution of India and",,

the law declared by the Apex Court in the decisions cited supra.""",,

On the same analogy, learned Counsel for the petitioner urged that there is no justification for giving the reservation to SC/ST category of persons",,

by carving out a separate class for giving them CL-7D licence with relaxed conditions for investment in hotel and lodging houses to be constructed,,

by them and the same is an invidious classification falling foul with Article 14 of the Constitution of India.,,

18. Learned Counsel for the petitioner also relied upon the case of Aashirwad Films v. Union of India and Others, (2007) 6 SCC 624.",,

Dealing with a taxing statute providing for entertainment tax and quashing a notification levying entertainment tax only at the rate of 10% in respect,,

of Telugu films and at the rate of 10% in respect of non-Telugu films by the State of Andhra Pradesh, the Court held that even though the taxing",,

Statute enjoyed a greater latitude under Article 14 of the Constitution, the said discrimination was violative of Article 14 of the Constitution and",,

observed as under in paragraphs 13,14,15 and 24 of the judgment:",,

13. It is not the case of the respondent that the imposition of different rates of entertainment tax is justified on any ground other than language.",,

Entertainment of a person may not wholly depend upon the language of the film he sees. A film may be produced in one language and may be,,

dubbed in another. Even within a State, people belonging to different regions may speak different languages, although the State language may be",,

one.,,

14. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down,,

in a large number of decision of this Court that a taxation statute for the reasons of functional expediency and even other wise, can pick and choose",,

to tax some. Importantly there is a rider operating on this wide power to tax and even discriminate in taxation: that the classification thus chosen,,

must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the,,

statute. Thus, the classification must bear a nexus with the object sought to be achieved. (See Kunnathat Thathunni Moopil Nair v. State of",,

Kerala and Another, AIR 1961 SC 552; East India Tobacco Company v. State of Andhra Pradesh and Another, AIR 1962 SC 1733;",,

V. Venugopala Ravi Verma Rajah v. Union of India and Another, AIR 1969 SC 1094; Assistant Director of Inspection Investigation",,

v. Kum. A.B. Shanthi, AIR 2002 SC 2188 and Associated Cement Companies Limited v. Government of Andhra Pradesh and",,

Another, AIR 2006 SC 928.",,

15. Objectives in a statute may have a wide range. But the entire matter should also be considered from a social angle. In any case, it cannot be",,

the object of any statute to be socially divisive in which event it may fall foul of broad constitutional scheme enshrined under Articles 19 and 21 as,,

also the preamble of the Constitution of India.,,

24. This Court in this case is not concerned with the application of test of reasonableness while considering the constitutionality of a statute. The,,

test of reasonableness, however, would vary front statute to statute and the nature of the right sought to he infringed or the purpose for imposition",,

of the restriction. It is also not a case where a section of the people have been picked up and they form the constituted class by itself. It is,,

furthermore not a case where the State has picked up and chosen districts, objects, methods in the matter of imposition of tax. However, although",,

a legislative body has a wide discretion, and taking statute may not be held invalid unless the classification is clearly unreasonable and arbitrary but",,

it is also trite that class legislation is that which makes an improper discrimination by conferring particular privileges: ""Class legislation is that which",,

makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons,",,

ail of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or,,

substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. A classification must not be,,

arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the",,

law operates. (See Weaver"s Constitutional Law, page 397)."""""",,

19. Mr. Mohan Bhat also relied upon the decision of the Hon"ble Supreme Court in the case of Reliance Energy Limited and Another v.,,

Maharashtra State Road Development Corporation Limited and Others, (2007) 8 SCC 1, for the proposition that legal certainty is an",,

important aspect of rule of law and therefore, in the impugned Rules, where the category of persons allowed to consume liquor was undefined and",,

included not only the guests residing in such hotel/s owned by SC/ST persons but also casual visitors, it entirely renders it uncertain and",,

uncontrollable number of guests may visit the privileged category licensed shop for which the liquor licence in question may be issued to them in,,

CL-7D category. Mr. Mohan Bhat therefore, submitted on the basis of this judgment, not only the restrictions provided in Rule 5 are likely to be",,

defeated but the wide definition of coverage of the persons consuming liquor under the impugned licences in CL-7D, deserves to be quashed for",,

completely violating the principle of legal certainty even in the case of such largesse as is the case in the present case.,,

20. Lastly, Mr. Mohan Bhat strongly drew support from the recent judgment of the Hon"ble Supreme Court in the case of State of Maharashtra",,

and Another v. Indian Hotels and Restaurants Association and Others, (2013) 8 SCC 519, dealing with the right of dance performers in",,

hotels and bars which was banned by Rules amended by the Bombay Police Act, 1951 and such an amendment of Sections 33-A and 33-B",,

effected by the Amendment Act of 2005 was struck down by the Hon''ble Supreme Court with the he towing relevant observations:,,

108. The High Court has held that the classification under Sections 33-A and 33-B was rational because the type of dance performed in the",,

establishments allowed them to be separated into two distinct classes. It is further observed that the classification does not need to be scientifically,,

perfect or logically complete. The High Court has, however, concluded that classification by itself is not sufficient to relieve a statute from satisfying",,

the mandate of the equality of clause of Article 14. The amendment has been nullified on the second limb of the twin test to be satisfied under,,

Article 14 of the Constitution of India that the amendment has no nexus with the object sought to be achieved, Mr. Subramanium had emphasised",,

that the impugned enactment is based on consideration of different factors, which would justify the classification. We have earlier noticed the",,

elaborate reasons given by Mr. Subramanium to show that the dance performed in the banned establishments itself takes a form of sexual,,

propositioning. There is revenue sharing generated by the tips received by the dancers. He had also emphasised that in the banned establishment,,

women, who dance are not professional dancers. They are mostly trafficked into dancing. Dancing, according to him, is chosen as a profession of",,

last resort, when the girl is left with no other option. On the other hand, dancers performing in the exempted classes are highly acclaimed and",,

established performer. They are economically independent. Such performers are not vulnerable and, therefore, there is least likelihood of any",,

indecency, immorality or depravity. He had emphasised that the classification to be valid under Article 14 need not necessarily fall within an exact",,

or scientific formula for exclusion or inclusion of persons or things. (See Welfare Association A.R.P. v. Ranjit P. Gohil, (2003) 9 SCC 358).",,

There are no requirements of mathematical exactness or applying doctrinaire tests for determining the validity as long as it is not palpably arbitrary.,,

(See Shashikant Laxman Kale v. Union of India, (1990) 4 SCC 366.",,

114. In our opinion, the appellants herein have failed to satisfy the aforesaid test laid down by this Court. The Counsel for the appellant had,",,

however, sought to highlight before us the unhealthy practise of the customers showering money on the dancers during the performance, in the",,

prohibited establishments. This encourages the girls to indulge in unhealthy competition to create and sustain sexual interest of the most favoured,,

customers. But such kind of behaviour is absent when the dancers are performing in the exempted establishments. It was again emphasised that it is,,

not only the activities performed in the establishments covered under Section 33-A, but also the surrounding circumstances which are calculated to",,

produce an illusion of easy access to women. The customers who would be inebriated would pay little heed to the dignity or lack of consent of the,,

women. This conclusion is sought to be supported by a number of complaints received and as well as case histories of girl children rescued from,,

the dance bars. We are again not satisfied that the conclusions reached by the State are based on any rational criteria. We fail to see how exactly,,

the same dances can be said to be morally acceptable in the exempted establishments and lead to depravity if performed in the prohibited,,

establishments. Rather it is evident that the same dancer can perform the same dance in the high class hotels, clubs, and gymkhanas but is",,

prohibited of doing so in the establishments covered under Section 33-A. We see no rationale which would justify the conclusion that a dance that,,

leads to depravity in one place would get converted to an acceptable performance by a mere change of venue. The discriminatory attitude of the,,

State is illustrated by the fact that an infringement of Section 33-A(1) by an establishment covered under the aforesaid provision would entail the,,

owner being liable to be imprisoned for three years by virtue of Section 33-A(2). On the other hand, no such punishment is prescribed for",,

establishments covered under Section 33-B. Such an establishment would merely lose the licence. Such blatant discrimination cannot possibly be,,

justified on the criteria of reasonable classification under Article 14 of the Constitution of India."""",,

21. Now, coming to the judgments relied upon by the opposite Counsels, the following brief review of the judgments cited by the State and",,

interveners is as under:,,

Besides relying upon the judgment of the Constitution Bench in Khoday Distilleries case (supra), the State also relied upon the decision of the",,

Hon"ble Supreme Court in the case of R. Chandevarappa and Others v. State of Karnataka, (1995) 6 SCC 309, and upholding the",,

provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition on Transfer of Certain Lands) Act, 1978 enacted by the State of",,

Karnataka and Karnataka Revenue Code, the Court held that the prohibitory clause is absolute in terms and stipulated to effectuate the",,

constitutional policy and therefore, the alienation of land by the assignee in favour of the appellant was violative of the said prohibitory clause and",,

was liable to be struck down. Likewise, the State urged before this Court that the reservation in favour of persons belonging to SC/ST category by",,

giving them CL-7D licence is a State policy which deserves to be protected for the benefit of persons belonging to such backward classes.,,

22. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde and Another, 1995 Suppl. (2) SCC 549, the Court upheld the steps",,

taken by the State for economic empowerment to tribals, dalits and poor is a facet of socio economic justice and upheld the statutory restraint on",,

the sale of agricultural land allotted to SC/ST/BC or the poor.,,

These cases are found to be not applicable in the facts of the present case, in view of peculiar nature of trade or business in potable liquor.",,

23. In view of the aforesaid legal spectrum and the contentions, this Court is of the opinion that the impugned sub-rule (7-D) inserted in the",,

Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 providing for CL-7D licence to the hotels and boarding houses owned by",,

persons belonging to SC/ST category with the relaxation of having minimum 15 double bedded rooms only in corporation areas and 10 double,,

bedded rooms in other areas with the concessional rate of annual fees leviable for such CL-7D licences is a rule not constitutionally permissible and,,

it creates an invidious classification in favour of persons belonging to SC/ST category and the said Rule is liable to be struck down. The reasons,,

are as follows:,,

Firstly, the State has failed to adduce any evidence, statistics or data establishing the rational nexus before this Court having undertaken any such",,

research or study (except Annexures-R1 to R3 documents giving data of such licences so far issued) on the basis of which they formed it as a,,

reasonable opinion to enact a policy of giving reservation to persons belonging to SC/ST category for having a privilege or extra advantage in the,,

liquor trade which is undisputedly is res extra commercium and no privilege or fundamental right or protection could be claimed as a matter of right,,

by such category of persons. Secondly, this Court is of the opinion that the impugned Rules not only violate the letter and spirit of the State policy",,

contained in the Directive Principles enacted in the Constitution under Article 47 of the Constitution, but also the said Rules are contrary to Rule 5",,

of the Karnataka Excise Licences (General Conditions) Rules, 1967 enacted by the State Government itself. No substantive defense or material",,

evidence has been adduced before this Court by the State that the said category of CL-7D licence is for really providing economic empowerment,,

or upliftment to the backward classes except the use of these vague expressions. The said trade admittedly being pernicious and inherently adverse,,

to public health, as found by the Hon"ble Supreme Court and which is undoubtedly causing not only injury to the health but a large number of",,

increasing motor vehicle accidents cases on the Stale and National Highways, providing for a mushroom growth in such trade through the",,

privileged outlets provided to the persons of backward classes/SC/ST category, who are presumed to be backward and poor partly also because",,

being consumers of liquor, cannot be said to be a sound and legally sustainable policy decision protected by the constitutional latitude available to",,

the State in respect of enacting such policies.,,

24. This Court is conscious that the Court would not venture to examine and quash the policy decision of State Government just for askance or by,,

being trigger happy, but then the duty lies upon the State to justify their policy decision, when such a challenge is laid before the Court, with",,

adequate data and material to support such a policy which apparently creates an invidious classification between persons who are engaged in that,,

trade. The case falls within the mischief delineated by Hon''ble Supreme Court in Khoday Distilleries case, specially in clause (g) of ratios of the",,

judgment quoted above.,,

25. Like in the case of dance bar girls and films and the rate of entertainment tax depending upon the language of films exhibited in Telugu and non-,,

Telugu, dealt in the case of Ashirwad Films and Indian Hotels and Restaurants case (supra), this Court does not find any strong reason to permit",,

an explanation of their economic upliftment for classification carved out for SC/ST category of people for allowing them this trade or licence given,,

on relaxed conditions about not only lesser investment but also completely ignoring the restrictions imposed under Rule 5 of the 1968 Rules which,,

restrict this trade in particular areas or vicinity and also in the areas dominantly resided by persons belonging to SC/ST category itself. It is like,,

restricting this category of people from consuming liquor on the one hand and on the other hand, pushing the very same category of persons into",,

that very trade as is sought to be done by this impugned Rules. How can such a policy with avowed conflicting objectives be justified by the State,,

under the guise of so-called economic upliftment of this class of persons for which no relevant data are produced by the State to justify such a,,

decision?,,

26. It was also brought to the notice of this Court that while the employment of women in this trade was prohibited by the General Conditions,,

Rules, but grant of such new CL-7D licences to women belonging to such SC/ST category is not so prohibited. Again, no justification for this is",,

produced before this Court. Similarly, without fixing the maximum number of licences to be issued under this category in accordance with Rule 12,",,

it is likely that despite ban of State on issuance of CL-2 and CL-7 licences to all category of persons including persons belonging to SC/ST,,

category, the impugned notification is likely to open the flood gates for issuance of any number of licences for this category of persons in CL-7D",,

category. This Court is of the opinion that Rule 12(1) is mandatory in character and not a loose end exercise to be undertaken by the State merely,,

because the words ''from time to time'' is employed in that Rule. The words ''shall determine'' in Rule 12(1) are of mandatory nature. The criteria of,,

computing the number of licences on the basis of population is only a guideline given for arriving at a reasonable number of licences to be issued.,,

The State must therefore, when a new category of licence is created, first fix the cap limit of licences on the basis of relevant evidence and data'',,

already gathered by it on the basis of research and study undertaken by them and then only enact such a policy and such cap of number can be,,

renewed from time to time under Rule 12(1) of the Rules.,,

27. This Court is not questioning the possible economic empowerment or upliftment of persons belonging to SC/ST category under the new,,

category of licences in CL-7D in the present case, but such a haphazard and unsound policy decision which is likely to defeat the very object of'',,

the regulator) enactment, cannot be permitted, as no rationale nexus of the impugned amendment with the object of the Act can be seen in the'',,

present case. The said pernicious trade by SC/ST category of persons is bound to be morel harmful for them rather than providing some economic,,

benefit. The State has produced the census figures of 2011 giving a district-wise population of all the 30 Districts and separately the population of,,

SC/ST category persons also have been given which indicates that there is fairly large spread of SC/ST population in all the Districts totalling to,,

1,04,74,992 for SC category and 42,48,987 for ST category as against the total urban population of 3,74,69,335 and 2,36,25,962 of rural'',,

population totalling to 6,10,95,297 out of which, male and female population are almost equally divided. Giving of new CL-7D licenses all over the'',,

State to SC/ST category of persons is not only more likely to invite consumers from these communities only to the new shops under CL-7D,,

licence and it would be quite contrary to the spirit of Rule 5 of 1967 Rules but the new Rules will also defeat the very purpose for which issuance,,

of CL-2 and CL-7 licenses have since long back been stopped by the State Government itself since 1994. Thus, it is not only clear that the State'',,

has failed to make any research or compile any data justifying their impugned policy decision but with whatever data available to them and,,

produced before this Court establishes that the impugned new Rules would defeat the purpose of the Act and restrictions and regulations already,,

enacted by the State.,,

28. That the contention of the respondents about the locus standi of the present petitioner to lay such a challenge before this Court is also,,

misconceived. Being the person in that trade itself, who knows the ins and outs of the business, is in fact, in a better position to support such a",,

challenge before the Court rather than simply a stranger or a public spirited person aggrieved by the mushroom growth of such pernicious trade in,,

the State. Therefore, this Court does not find any fault with the right of the present petitioner representing the federation of licensees in the trade of",,

liquor, in maintaining this petition, which allows this Court to examine such a Rule enacted by the State as a subordinate legislation on the anvil of",,

parameters given in the Constitution itself with the aid of various legal precedents cited at the Bar.,,

29. The contention with regard to power to enact such a Rule under Section 71 of the Act would also need a word. Section 71 of Karnataka,,

Excise Act, 1965 which gives the power to State Government to make Rules to carry out the purpose of the Act, inter alia, provides in sub-section",,

(2)(e) about:,,

71. Power to make Rules.-",,

(1).....,,

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules.-",,

(a)....,,

(b)....,,

(c)....,,

(d)....,,

(e) regulating the periods and localities in which, and the persons or classes of persons to whom, licences for the wholesale or retail sale of any",,

intoxicant may be granted and regulating the number of such licences which may be granted in any local area."""",,

It was emphasised before the Court by the State that the regulation of the trade for a class of persons can be enacted by the State under Section,,

71(2)(e) of the Act carving out such a clause for SC/ST category of people i.e., CL-7D licence cannot be questioned by the petitioner. This",,

contention is essentially fallacious and without any foundation. The class of persons, SC/ST in the present case, for which the amended rule has",,

been enacted, must withstand the test of Article 14 and unless it is a reasonable classification passing the test of Article 14, the power to enact such",,

a rule in sub-section (2)(e) of Section 71 itself does not save it. Since this Court has found that the impugned amendment does not pass the muster,,

of Article 14 of the Constitution, in the present case, therefore, this contention is also liable to be rejected.",,

30. In view of the above, this Court is of the opinion that the impugned notification Annexure-C, dated 9-6-2014 inserting sub-rule (7-D) in Rule 3",,

of the Rules of Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 and introducing a new licence in the form of CL-7D for",,

persons belonging to SC/ST category only, has no rational nexus to the objects sought to be achieved. The amendment in the Rules is in conflict",,

with the existing Rules and Regulatory provisions enacted in the Karnataka Excise Act, 1965 arid other subordinate Rules like Rules 5 and 12 of",,

the 1968 Rules. The same, therefore, deserves to be quashed and struck down by this Court as violative of Article 14 of the Constitution of India.",,

31. In view of the aforesaid, this Court is of the considered view that the Notification No. FD 14 PES 2013, dated 9-6-2014 inserting sub-rule",,

(7-D) in Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 and amendment in Rule 8 providing for annual fees on",,

such licences for persons belonging to SC/ST category, deserves to be quashed. Accordingly, the same is quashed and struck down as",,

unconstitutional.,,

32. The writ petition is, accordingly allowed. No order as to costs.",,