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WP-4915-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 23rd OF MARCH, 2026WRIT PETITION No. 4915 of 2026*SOM DISTILLERIES PVT. LTD. AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Naman Nagrath - Senior Advocate assisted by Shri Rahul Diwakar - Advocate for the petitioners.

Shri Harpreet Singh Ruprah - Additional Advocate General assisted by Shri Manas Mani Verma - Government Advocate for the respondents-State.

Shri Sanjay K. Agrawal - Senior Advocate assisted by Shri Nitesh Kumar Barman - Advocate for the intervener.
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ORDER

Shri Harpreet Singh Ruprah, learned Additional Advocate General, submits that there is an alternative remedy of revision provided under Section 62 of the Madhya Pradesh Excise Act, 1915, and the Rules made thereunder specifically in this regard against the impugned action of suspension, but instead of relegating the petitioners to avail the said statutory remedy of revision, with the consent of the learned counsel for the parties, the matter is heard finally.

2. This writ petition under Article 226 of the Constitution of India is filed by the petitioners challenging the order dated 04.02.2026 (Annexure P-8), whereby the licences of the petitioners were suspended.

3. On 20.03.2026, arguments were heard in part, as due to paucity of time,



arguments could not be completed by all the concerned parties. To recapitulate what transpire on 20.03.2026, it will be appropriate to reproduce the submissions made by Shri Naman Nagrath, learned Senior counsel for the petitioners and Shri Harpreet Singh Ruprah, learned Additional Advocate General.

4. Shri Naman Nagrath, learned Senior counsel submits that the petitioners are calling in question the order dated 04.02.2026 (Annexure P-8) passed by the Excise Commissioner, Madhya Pradesh, Gwalior, whereby 8 licences held by two distinct entities, namely, petitioner No.1 Som Distilleries Pvt. Ltd. and petitioner No.2 Som Distilleries and Breweries Pvt. Ltd. have been placed under suspension on the strength of show notice notice dated 26.02.2024, contained in Annexure P-3. It is submitted that in fact when show cause notice Annexure P-3 was issued, at that time the licences which were valid had their validity upto 31.03.2024. Therefore, it is submitted that since the period of licence came to an end on 31.03.2024, therefore, show cause notice should have come to an end automatically.

3. It is submitted that in criminal appeals suspension of sentence was granted by the High Court of Madhya Pradesh at Indore and since the suspension was granted, therefore, show cause notice lost its efficacy.

4. It is submitted that vide Annexure P-6, all the licences were granted afresh for the year 2024-25 and 2025-26, but since show cause notice relates to the period 2023-24, it could not have been extended for the licences which were granted for the year 2024-25 and thereafter, for the year 2025-26. Thus, it is submitted that the action taken vide Annexure P-8 placing these licences



under suspension for the year 2025-26 being not relatable to the show cause notice dated 26.02.2024 (Annexure P-3), which was for the year 2023-24, no action could have been taken.

5. It is further submitted that the first reply to the show cause notice was furnished on 04.03.2024 and in continuation to the same, second reply was furnished on 18.07.2024 as is contained in Annexure P-5. It is also submitted that since these 8 licences deal with distilling, brewing, filtration of distilled and brewed material, so also distilling of country liquor and their respective bottling, cancellation of all these 8 licences at one go, is contrary to the principles of natural justice and the law.

6. It is further submitted that combined show cause notice to different entities without referring to which of the entities were guilty of violation, is unheard of.

7. It is also submitted that show cause notices, with the efflux of time and with grant of fresh licences, resulted in the SCN coming to an end.

8. It is further submitted that show cause notice is based on conviction of certain employees. Reliance is placed on the judgment of the Hon'ble Supreme Court in **N.S. Shethna and others Vs. Vinubhai Harilal Panchal**, reference to which is uploaded from 1966 SCC OnLine SC 239. Reading from paragraphs 2 and 3 of the said judgment, it is submitted that with the issuance of fresh licences, the matter had come to an end. Paragraph 2 and 3 of the said judgment reads as under:-

"2. At all material times the respondent was carrying on and still carries on the business of exhibiting cinematographic pictures



at Lakshmi Talkies in Ahmedabad and had obtained for that purpose a licence for sale of tickets which was valid upto December 31, 1960. On an allegation that through his manager and other employees he was indulging in sale of tickets contrary to the Bombay Cinema Rules, 1954, framed under the Bombay Cinema (Regulation) Act, 11 of 1953 a notice dated June 14, 1960 was served upon him to show cause why the said licence should not be suspended. On an inquiry having been held by the first appellant, that officer passed the impeached order suspending the said licence for a period of two months from the date of service of the order. But before the inquiry was completed and the said order passed, the period for which the licence was issued expired and an order renewing it for the next year, that is 1961, was passed on December 31, 1960. The impugned order was served on the respondent on March 5, 1961.

3. Aggrieved by the said order the licensee took out a writ petition in the High Court for setting aside the said order. The plea urged in the petition was that the show cause notice related to the licence for the year 1960 which expired on December 31, 1960 and therefore did not affect the renewed licence for 1961 sought to be suspended by the impugned order. The High Court took the view that the renewed licence was a separate licence and not in continuation of the licence for the year 1960 and a fresh show cause notice ought to have been served for suspending the



renewed licence and that not having been done the inquiry was not in consonance with the rules and quashed the order."

9. It is submitted that in paragraph 9 of the said judgment of **N.S. Shethna** (supra), it is held that current licences could not have been suspended as new licences cannot be suspended in the light of old show cause notice.

10. It is also submitted that in terms of the Section 28 of the Excise Act, since licence during currency of which SCN was issued, was only upto 31.03.2024, therefore, there was no justification in continuing the show cause notice, which ultimately culminated in the order of suspension contained in Annexure P-8.

11. Reading from the provisions contained in Section 31(1-A) of the Madhya Pradesh Excise Act, 1915, it is submitted that "Before making an order cancelling or suspending a licence permit or pass under sub-section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard." Thus, it is submitted that in fact the requirements which are ingrained in sub-section (1-A) of Section 31 of the Excise Act are that the authorities should record in writing the reasons for the proposed action.

12. Reading the second clause of this sub-section, it is submitted that in fact a draft order should have been provided by the Commissioner to the licensee. Thirdly, that reasonable opportunity of being heard should have been provided.



13. It is submitted that common show cause notice for two different legal entities, will give rise to a question as to which of the entities convicted persons belong to i.e. whether they belong to one entity or both. Though it is submitted that there is no mention of this fact in the SCN, however, at this stage, Shri Harpreet Singh Ruprah, learned Additional Advocate General, interrupts and submits that even in the reply to the show cause notice, the petitioners have not come clean as to which of the entities i.e. the petitioners, the convicted employees belong to.

14. It is also submitted that judgment of conviction was passed by the concerned Additional Sessions Judge, vide judgment dated 23.12.2023 in S.T. No.21/2021. Reading from paragraph 111, it is submitted that persons mentioned therein at S.No.1, 2 and 3, namely, Umashankar, Dinkar and Mohansingh, were convicted under Sections 420, 467, 468, 471, 120-B of of the Indian Penal Code, 1860, along with persons mentioned at S.No.8, 9, 10 and 11, namely, Deenanath Singh, Shailendra Singh, Gurudarshan and Surjeet Lal.

15. It is admitted that persons namely, Umashankar, Dinkar and Mohansingh were working as Supervisors in the petitioners company, whereas Deenanath Singh, Shailendra Singh, Gurudarshan and Surjeet Lal were working as Directors. It is submitted that the show cause notice makes a mention of only names of the aforesaid persons and admitted they were not convicted under any of the provisions contained in the Excise Act.

16. It is submitted that those who are convicted under the provisions of the Section 34(2) of the Excise Act are Santosh and Omprakash, whose names



are not mentioned in the show cause notice. Thus, it is submitted that since they have been convicted under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860, therefore, they will be outside the purview of the provisions contained in Sections 31(1)(b) and 31(1)(c) of the Excise Act because none of the persons mentioned in the show cause notice, namely, Umashankar, Dinkar, Mohansingh, Deenanath Singh, Shailendra Singh, Gurudarshan and Surjeet Lal, have been convicted either under the provisions of the Excise Act or under the provisions of the Dangerous Drugs Act, 1930 or under the provisions of the Indian Merchandise Marks Act, 1889, or under any Section which have been introduced into the Indian Penal Code (XLV of 1860) in Section 3 of that Act; and, therefore, it is submitted that since names of Santosh and Omprakash, who were convicted under Section 34(2) of the Excise Act, do not find mention in the show cause notice and even their identification with the two entities is not shown, therefore, action under Sections 44 / 31(1)(b)(c), is wholly vitiated. Therefore, it is submitted that the impugned order deserves to be set aside or at least stayed in terms of the directions of the Hon'ble Supreme Court.

17. It is also submitted that Section 3 of the Indian Merchandise Marks Act, 1889, has introduced/incorporated by way of amendment in the IPC Sections 478 to 489 and since conviction is not under any of these Sections, starting from Section 478 to Section 489 of the IPC, which have been introduced in the IPC through the Act of 1889, the act of the respondents cannot be justified. Therefore, a prayer is made that order dated 04.02.2026 (Annexure P-8) be set aside.



18. Shri Harpreet Singh Ruprah, learned Additional Advocate General, in his turn, submits that Annexure P-3 is the show cause notice. It is submitted that names of Santosh and Omprakash, who have been convicted by the learned Additional Sessions Judge, finds mention in the second paragraph of this show cause notice, wherein it is mentioned that Santosh and Omprakash have been convicted under Section 34(2) of the Madhya Pradesh Excise Act, whereas others have been convicted under Sections 420, 467, 468, 471, 120-B of of the Indian Penal Code. It is also submitted that allegation on Santosh and Omprakash is that they as an agent of a carrier, which was hired by the licensee or his agents were involved in using forged permit books for transportation of liquor from Raisen to Diu. Thus, it is submitted that submissions made by Shri Naman Nagrath, learned Senior counsel, that their names have not been mentioned in the show cause notice, is factually incorrect.

19. Shri Harpreet Singh Ruprah, reading from his reply, submits that three appeals have been filed, namely, Criminal Appeal No.1246/2024 (Annexure R-1), Criminal Appeal No.1146/2024 (Annexure R-2) and Criminal Appeal No.1249/2024 (Annexure R-3) by three different sets of persons, namely, Supervisors, Directors or former Directors and the driver and cleaner of the truck. It is submitted that the fact in regard to their status is an admitted fact, which can be read into paragraph 5.2 of their respective appeals.

20. Reading from paragraph 5.2 of Annexure R-3, it is pointed out that both Santosh and Omprakash admitted that they have been engaged by Chanchal Goods Carrier, an independent contractor dealing in the business



of transportation. Similarly, in Annexures R-1 and R-2, convicted accused have admitted their status as Supervisors and Directors of the petitioners' company. Som Distilleries Breweries Pvt. Ltd., a company incorporated under the Companies Act, has taken the transport services of Chanchal Goods Carrier for transport of liquor from Madhya Pradesh to Diu and the appellants being the driver and helper were given the responsibility of the same along with the necessary documents/licences/permits required for the transportation of liquor. Thereafter, in paragraph 5.3, a vivid description is given as to how their truck was intercepted by the SHO of the Police Station Betma and then what followed.

21. Today, Shri Harpreet Singh Ruprah, learned Additional Advocate General, submits that in the first reply to the show cause notice dated 26.02.2024, as was filed on 04.03.2024, it is mentioned that despite there being stay on the judgment of the Sessions Court, issuance of show cause notice falls in the category of contempt of the Court. It is submitted that there was no stay on the judgment of the trial Court, but it was only the suspension application, which was entertained by the High Court.

22. It is also submitted that the petitioners had filed two replies, one on 04.03.2024 and another on 18.07.2024 and in none of these replies, they have raised any issue in regard to the propriety of the show cause notice. It is submitted that in view of the judgment of the Division Bench of this High Court in case of **Rathore and Mehta Associated, Bhopal Vs. State of Madhya Pradesh and others, 2023 SCC OnLine MP 1482 : 2023 (3) MPLJ 409**, in paragraphs 10, 11 & 28, the position in regard to non-grant of opportunity of



hearing has been dealt with.

23. It is also submitted that though the provisions as contained in Section 31(1)(d) of the Madhya Pradesh Excise Act, have not been mentioned, but in view of the law laid down by the Hon'ble Supreme Court in **N. Mani Vs. Sangeetha Theatre and others, (2004) 12 SCC 278**, wherein in paragraph 9, it is held that "It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

24. Reliance is also placed on the judgment of the Division Bench of this High Court in **Smt. Sandhya Sharma Vs. State of Madhya Pradesh and others**, in W.A.No.316/2023, wherein reference is made to paragraph 10, where the Hon'ble Division Bench of this High Court apart from referring to **N. Mani** (supra) also made a reference to paragraph 19 of the judgment of the Hon'ble Supreme Court in **Ramsunder Ram Vs. Union of India, (2007) 13 SCC 255**, so also another judgment of the Supreme Court in **P.K. Palanisamy v. N. Arumugham, (2009) 9 SCC 173**.

25. Shri Harpreet Ruprah, learned Additional Advocate General, submits that both the entities are manned by the same Director namely Surjeet Lal, who according to him was Managing Director in both the petitioner companies. It is, thus, submitted that the distinction sought to be made between the two identities i.e. the two petitioners is insignificant because both the companies are manned by the same Managing Director, namely,



Surjeet Lal.

26. At this stage, Shri Sanjay K. Agrawal, learned Senior Advocate, on my query to the learned Additional Advocate General that as to why name of Shri Surjeet Lal is not mentioned in the show cause notice, submits that this is precisely the allegation of the intervener that the Excise Commissioner was not acting bonafidely and had not mentioned name of Shri Surjeet Lal, though he was the Managing Director of the petitioner companies. It is submitted that undue advantage is sought to be given to the petitioner companies. It is submitted that Shri Surjeet Lal was one of the accused before the trial Court, judgment of which has generated the present litigation and he was not only arrayed as accused No.6, but was also convicted.

27. To this Shri Harpreet Singh Ruprah, learned Additional Advocate General, replies that in the show cause notice, after mentioning five names, “and others” is mentioned.

28. Shri Harpreet Singh Ruprah, learned Additional Advocate General, has drawn the attention of this Court to the provisions of Rule 3(11) of the Madhya Pradesh Distillery Rules, 1995, to point out that it is not a fresh grant as far as distillery license is concerned, but it is annual renewal, subject to due observance of the provisions of the Act and the Rules made thereunder and the conditions of the license.

29. It is beyond comprehension that when the Managing Director of a limited and private limited company was convicted, then the Excise Commissioner not mentioning his name in the show cause notice reflects upon the intentions of the Excise Commissioner Shri Abhijit Agrawal.



Prima facie it appears that he was not acting bonafidely, otherwise he would not have left the Managing Director of the company.

30. To give an analogy which is cross-checked from the learned Additional Advocate General, that the office of Advocate General is always referred to as Advocate General and others and not as Panel Lawyer and others of the Advocate General Office, to which Shri Ruprah, conceded that Advocate General's Office will always be known in the name of Advocate General and others and not Panel Lawyer and others. When same analogy is extended, then it is evident that the conduct of the Excise Commissioner was not up to the mark in not mentioning the name of the convicted Managing Director Surjeet Lal.

31. Shri Sanjay K. Agrawal, learned Senior Advocate assisted by Shri Nitesh Kumar Burman, Advocate, submits that petitioner No.1 was granted primary licence D-1 i.e. Distillery License and then followed by licences CS-1, CS-1B which are supply licences. Similarly, petitioner No.2 was given FL-9 licence to manufacture foreign liquor and B-3 licence to manufacture beer and, thereafter, other licenses were given for the purpose of warehousing and bottling.

32. Shri Sanjay K. Agrawal, learned Senior counsel, submits that B-1, FL-9 and B-3 are perpetual licences. He refers to Sub-rule (11) of Rule 3 of the Madhya Pradesh Distillery Rules, 1995, to point out that Sub-rule (11) in itself provides for renewal of the licence every year, subject to due observance of the provisions of the Act, the Rules made thereunder and the conditions of the licence.



33. It is submitted that similar provisions are contained in Rule 3(12) of Madhya Pradesh Foreign Liquor Rules and similar provisions are also contained in the Madhya Pradesh Brewery and Wine Rules, 2000. Thus, it is submitted that as far as manufacturing licences are concerned, they are perpetual in nature. Thus, the contention of the learned counsel for the petitioner that his licences were not renewed, but were fresh grants for the year 2024-25 and 2025-26, is incorrect.

34. At this stage, Shri Sanjay K. Agrawal, learned Senior counsel, also submits that the judgment of Hon'ble Supreme Court in **N.S. Sethna and others** (supra), is distinguishable on the ground that the licence which was granted to the Laxmi Talkies in Ahmedabad was not a perpetual licence, but was restricted to a period, validity of which was December 31, 1960. Thus, it is submitted that a distinction is to be drawn between the perpetual licences and grant of fresh licences and thus, in the present case, the licence being perpetual, it will be a case of renewal only and not that of grant of fresh licence.

35. It is also submitted that in terms of the provisions contained in Section 31(1)(d), if the holder thereof is convicted of any cognizable and non-bailable offence, then also the power to cancel or suspend the licence can be used, and the same will be applicable, inasmuch as, Surjeet Lal, Managing Director of the petitioner companies from 21.03.2009 to 10.08.2016, was also convicted. It is pointed out that date of the incident was 14.12.2011, when Surjeet Lal was the Managing Director. Thus, it is submitted that, the then Excise Commissioner, who issued the show cause notice, was extra



lenient towards Surjeet Lal and the company.

36. It is also submitted that the doctrine of “alter ego” will be applicable and in support of this contention places reliance on the judgment of the Supreme Court in case of **Iridium India Telecom Limited Vs. Motorola Incorporated and others**, (2011) 1 SCC 74. Referring to paragraph 63, it is pointed out that the doctrine of “alter ego” will be applicable as mens rea is attributed to corporations on this very principle.

37. It is further submitted that Section 31(1)(c) of the Excise Act will also be applicable, inasmuch as, loss of revenue was caused by the petitioner companies, on account of charges of transferring finished excisable products from Raisen to Diu on the strength of forged and fictitious transport permits.

38. It is also submitted that Gurudarshan Arora, one of the convicted accused and whose name finds mention in the show cause notice, unlike that of Surjeet Lal, who too was convicted, was a Director in petitioner companies, the provisions of not only Sections 31(1)(b) and 31(1)(c) of the Madhya Pradesh Excise Act will be applicable, but even Section 31(1)(d) of the Excise Act will also be applicable.

39. It is also pointed out that in fact after issuing show cause notice in the year 2024, the Excise Commissioner was sleeping over the matter for about two years. When the intervener made a complaint to the Chief Secretary of Madhya Pradesh as contained in Annexure I-3 on 03.07.2024, with copies to other functionaries including the Chief Minister, etc., then only on his persistence, the Excise Commissioner woke up from his slumber and passed the impugned order (Annexure P-5). Thus, it is submitted that the Excise



Commissioner was not acting bonafidely, inasmuch as, in the first place, he failed to make a mention of name of Surjeet Lal, Managing Director of the petitioner companies in his show cause notice and also in the final order. Secondly, he slept over the matter for about two years, which shows his other intentions rather than acting bonafidely.

40. Shri Naman Nagrath, learned Senior counsel in his rejoinder takes the first objection to the locus of the intervener. He also raises an eyebrow about the motives of the intervener. Thereafter, reading Section 28 of the Madhya Pradesh Excise Act, it is pointed out that licences are not in perpetuity, but for a fixed duration. It is submitted that when Section 28 is read with Rule 3(11) of the Madhya Pradesh Distillery Rules, 1995, then it will be clear that licence was not in perpetuity. Therefore, the judgment of the Hon'ble Supreme Court in case of **N.S. Sethna** (supra) in paragraphs 4 and 9 is relevant. It is submitted that opportunity of hearing, though sought not once but twice while giving reply to the show cause notice, was not afforded. Thirdly, it is submitted that since the show cause notice confines only to five persons, therefore, it cannot be extended beyond those five persons.

41. Reliance is placed on the judgment of the Hon'ble Supreme Court in case of **Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405**. Reading paragraphs 8 and 9 of the said judgment, it is submitted that the things which are not mentioned in the show cause notice, cannot be incorporated by reference.

42. It is also submitted that the requirements to fulfill parameters of Section 31(1)(c) of the Madhya Pradesh Excise Act are different from those



which are required to be fulfilled to bring a case within the ambit of Section 31(1)(d) of the Madhya Pradesh Excise Act.

43. It is submitted that since the company is not an accused, though the judgment of Iridium India Telecom Ltd (supra), in paragraphs 63 and 64 has categorically held that a company can be arrayed as an accused and its culpability can be examined and on being held guilty, persons who were at the helm of the affairs can be sentenced, but in the present case, since the company is not an accused, show cause notice cannot be extended to include Section 31(1)(d) of the Madhya Pradesh Excise Act. Thus, it is submitted that the principle of “alter ego” will not arise in the absence of conviction of the company. Thus, it is prayed that it is a fit case to grant injunction when petitioner companies are giving revenue of about Rs.700 to Rs.800 crores to the State and the livelihood of about 3,000 persons is at stake.

44. It is also submitted that Section 31 of the Madhya Pradesh Excise Act cannot be read beyond the judgment of conviction passed by the trial Court. It is submitted that the appeal memo or the evidence or the statements of the accused under Section 313, Cr.P.C., cannot be read and the Court has to confine itself to the finding of conviction and the substantive Sections under which an accused has been convicted.

45. After hearing learned counsel for the parties, the issue which emerges herein is whether the issuance of show cause notice, as contained in Annexure P-3, on the strength of conviction passed by the learned Additional Sessions Judge, Depalpur, District Indore, is within the four corners of requirements of Section 31(1) of the Madhya Pradesh Excise Act, 1915, or



whether the Excise Commissioner exceeded his authority while issuing the show cause notice, as submitted by Shri Naman Nagrath, learned Senior counsel.

46. Another aspect which is required to be examined is whether the principles of natural justice were violated before taking the final decision, as contained in Annexure P-8, whereby various licences held by the petitioners have been suspended alleging violation of the provisions as contained in Section 31(1) of the Madhya Pradesh Excise Act.

47. The third issue which emerges herein is to determine as to whether the alleged acts of violation are covered under Clauses (b) and (c) of Section 31(1) of the Madhya Pradesh Excise Act, or there is inherent implication of Section 31(1)(d) to which there is a reference in paragraph 6 of the impugned order dated 04.02.2026 (Annexure P-8).

48. An ancillary issue which arises herein is whether the conviction of the driver and cleaner of the truck in which confiscated material was being transported, namely, Santosh and Omprakash under Section 34(2) of the Madhya Pradesh Excise Act, will be covered in terms of the provisions contained in Section 31 of the Madhya Pradesh Excise Act or it only relates to the holders of the licence, as has been submitted by Shri Naman Nagrath.

49. Yet another issue which emerges is whether the licences are in perpetuity, subject to renewal at prescribed periodic intervals or every time it is a fresh grant.

50. Section 31 deals with "Power to cancel or suspend licence, etc." and Sub-section (1) of Section 31 provides that "Subject to such restrictions as



the State Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it - (a) if any duty or fee payable by the holder thereof be not duly paid; or, (b) in the event of any breach by the holder thereof or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or, (c) if the holder thereof, or any of his servants, or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act or any other law for the time being in force relating to revenue, or of any offence (under the Dangerous Drugs Act, 1930 (11 of 1930), or under the Indian Merchandise Marks Act, 1889 (IV of 1889), or under any section which has been introduced into the Indian Penal Code (XLV of 1860), Section 3 of that Act; or, (d) if the holder thereof is convicted of any cognizable and non -bailable offence;"

51. Section (1-A) of Section 31 of the Madhya Pradesh Excise Act provides that "Before making an order cancelling or suspending a licence permit or pass under sub -section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard."

52. When show cause notice (Annexure P-3) and the impugned order dated 04.02.2026 (Annexure P-8) are tested on the touchstone of the provisions contained in Sub-section (1-A) of Section 31 of the Madhya Pradesh Excise Act, 1915, then it is evident that show cause notice (Annexure P-3) *prima facie* fulfills all the three requirements, namely, it makes a mention of



conviction of two of the accused Santosh and Omprakash under Section 34(2) of the Madhya Pradesh Excise Act and conviction of other accused persons under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860. It also gives details of the incident which took place on 14.12.2011 at 20:15 hours on Mhow-Neemuch road, Ghatabillod, where truck bearing registration No.MP09-HF-5185, containing 1200 boxes of foreign liquor Bluechip whiskey, was found to be transported without valid licence. It also makes a mention of the fact that permit books were forged and there was a conspiracy. Different accused persons had prepared number of forged permits as are mentioned in the show cause notice and, thereafter, it made reference to Section 44 and Section 31 of the Madhya Pradesh Excise Act and categorically stated that five of the persons employed with the company were convicted. It also granted opportunity of hearing asking the addressees to submit reply within 7 days of receipt of the notice.

53. It is evident from the record and not disputed by the parties that first reply to the show cause notice was furnished on 04.03.2024, cumulatively filed along with Annexure P-5. Interestingly, this reply only makes a mention of the fact that criminal appeals were filed at the Indore Bench of the High Court and interim application has been disposed of by the Indore Bench of the High Court. In this regard, three criminal appeals, namely, Criminal Appeal No.1146/2024 filed in relation to Surjeet Lal, Dina Nath Singh, Shailendra Singh and Gurudarshan Arora; Criminal Appeal No.1246/2024 was filed qua Dinkar Singh, Uma Shankar and Mohan Singh Tomar; and Criminal Appeal No.1249/2024 is filed qua Santosh Gadariya



and Omprakash Singh. Thus, the petitioners took cognizance of this fact as mentioned in the show cause notice that even the driver, cleaner of the truck were convicted and appeals have been filed on their behalf too.

54. A perusal of the memo of appeals, as have been filed on behalf of three different sets of appellants will reveal that counsel for all the three sets of appellants is common, namely Ms. Gunjan Chowkey.

55. Another interesting facet of the first reply to the show cause notice is audacity of the petitioners in threatening the Excise Commissioner, as can be seen from paragraph 4 that since judgment of the trial Court has been stayed, therefore, issuance of show cause notice falls under the purview of contempt of the High Court.

56. Second reply was filed on 18.07.2024 in which it is mentioned that on six of the persons, namely, Uma Shankar Sharma, Dinkar Singh, Mohan Singh Tomar, Dina Nath Singh, Shailendra Singh and Gurudarsh Arora, the provisions of Section 44 of the Madhya Pradesh Excise Act will not be applicable.

57. It is also mentioned in paragraph 2 that the accused, who have been convicted under Section 34(2) of the Excise Act, namely, Santosh Gadariya and Omprakash Lodhi, were not employees of the company and, therefore, there is no justification to make mention of their conviction in the show cause notice.

58. Interestingly, neither first reply dated 04.03.2024 nor the second reply dated 18.07.2024, makes a mention of the fact that how petitioners are innocent or are not guilty of using forged transit permits to transport liquor



from Raisen to Diu. There is no explanation to the said allegation. Thus, by implication, there is an admission of guilt that the company and its agents were involved in transportation of foreign liquor on the strength of forged permits.

59. Another interesting aspect is that in the first reply, a threat which has been handed down in paragraph 4, *prima facie* reflects guilty mind of the petitioners.

60. Though Shri Naman Nagrath, learned Senior counsel submits that they are company having turnover of Rs.700 to Rs.800 crores, but it is necessary to note that an authorized signatory of the company, who furnished the reply did not even understood the meaning of suspension of sentence granted under Section 389 of the Cr.P.C. vis-a-vis stay on the judgment of conviction. No document has been produced before this Court at any stage to point out that High Court of Madhya Pradesh at Indore Bench ever stayed the operation of the judgment of the trial Court.

61. Thus, reliance on the judgment of the Hon'ble Supreme Court in case of **Gwalior Distilleries Private Ltd. v. State of Madhya Pradesh and others**, (2020) 12 SCC 690, to suggest that there is a violation of Article 14 of the Constitution besides that of Sub-section (1-A) of Section 31 of the Madhya Pradesh Excise Act, is not made out. The petitioners have not brought any case where any other licensee has been dealt with in any different manner on proved allegation of transportation of foreign liquor on the basis of forged permits, resulting in conviction of the Managing Director, Director, agents/servants of the licensee by the competent Court. No case of hostile



discrimination is also made out as put forth before this Court.

62. Thus, when three aspects of Sub-section (1-A) of Section 31 are taken into consideration, namely, recording of reasons in writing for the proposed action, furnishing a brief statement to the licensee and that afford him a reasonable opportunity of being heard, then all three requirements having been fulfilled, it cannot be said that there is any violation of Article 14 of the Constitution or Sub-section (1-A) of Section 31 of the Madhya Pradesh Excise Act, 1915.

63. Second submission put forth by the learned Senior counsel for the petitioners that Clause (c) of Sub-section (1) of Section 31 of the Excise Act applies only to the licensee and not to the servants, is not correct in my opinion. The opening words of Clause (c) of Sub-section (1) of Section 31 of the Excise Act are that "if the holder thereof, or any of his servants, or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act ..."

64. Thus, the expression 'anyone acting on his behalf with his express or implied permission', will include the driver and cleaner of the truck in which material was transported. Therefore, their conviction under Section 34(2) of the Madhya Pradesh Excise Act, will bind the licensee in terms of the language of Clause (c) of Sub-section (1) of Section 31 of the Excise Act.

65. Transporting liquor without permit means to cause loss of revenue and, therefore, even the second part of Clause (c), namely "is convicted of any offence under this Act or any other law for the time being in force relating to revenue", shall also be attracted.



66. It is true that the provisions of the Indian Merchandise Marks Act, 1889, incorporates certain offences in the Indian Penal Code from Section 478 to Section 489 by way of amendment in the Indian Penal Code, but the Indian Merchandise Marks Act deals with "trade mark" and "trade description". It also deals with "false trade description". By means of amendment in the Indian Penal Code, Section 3 substituted Chapter XVIII of the Indian Penal Code on the subject of "Trade, Property and Other marks."

67. Trade is different from trade mark. Meaning of trade is to be understood in terms of the provisions contained in the Excise Act and also in terms of the terms and conditions incorporated in the licence besides the relevant Rules framed under the Excise Act.

68. Sub-section (8) of Section 2 of the Excise Act deals with excise revenue and provides that "*excise revenue*" means revenue derived or derivable from any duty, fee, tax, penalty, payment (other than a fine imposed by a Court of Law) or confiscation imposed or ordered or agreed to under the provisions of this Act, or of any law for the time being in force relating to liquor or intoxicating drugs.

69. Sub-section (16) of Section 2 of the Madhya Pradesh Excise Act, 1915, defines "sale" to mean any transfer otherwise than by way of gift.

70. The Madhya Pradesh Excise Act, 1915 was enacted for the purpose of control and to regulate import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs and various provisions are made for the said purpose in the Act.

71. Section 9 of the Madhya Pradesh Excise Act, 1915, deals



with 'Restriction on import, export or transport' and provides that without the sanction of the State Government no intoxicant shall be imported, exported or transported, except - (a) after payment of any duty to which it may be liable under this Act, or execution of a bond for such payment; and (b) on compliance with such conditions as the State Government may impose.

72. Section 10 of the Madhya Pradesh Excise Act, 1915, provides for 'Requirement of pass for import, export or transport. This pass is to be issued under the provisions of the Act and allegation is that liquor was being transported without the authorized pass that means to cause loss of revenue, which will be clearly covered under second part of Clause (c) of Sub-section (1) of Section 31 of the Excise Act. It is true that the provisions of the Indian Merchandise Marks Act, 1889, will not be applicable to the present case, but at the same time, the provisions of the Excise Act are applicable.

73. It is interesting to note, as has been submitted by Shri Sanjay K. Agrawal, learned Senior counsel, that the Excise Commissioner while giving the show cause notice omitted name of Surjeet Lal, who was admittedly Managing Director of the petitioner companies from 2009 to 2016 i.e. he was at the helm of affairs in 2011 when the incident took place, but this omission will not come in the way of the State, inasmuch as, it is admitted by the parties and not disputed before this Court that Surjeet Lal was also convicted vide Annexure P-4, judgment of conviction passed by the trial Court.

74. As far as use of Clause (d) of Sub-section (1) of Section 31 is concerned, it is an admitted fact that the conviction of other persons under



Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, will be covered by this clause as they are cognizable and non-bailable offence. Therefore, on this touchstone also, the impugned order cannot be questioned.

75. Sub-section (2) of Section 31 of the Excise Act provides that "Where a licence, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c) or clause (e) of sub -section (1), the authority aforesaid may cancel any other licence, permit or pass granted to such person under this Act or under any other law for the time being in force relating to excise revenue, or under the Opium Act, 1878 (1 of 1878).

76. Law in regard to requirements to be fulfilled before cancellation or suspension of licence is summarized in case of **Bishnu Ram Borah v. Parag Saikia**, AIR 1984 SC 989: (1984) 2 SCC 488, and, therefore, I am satisfied that the requirements of Sub-section (1) of Section 31 of the Excise Act are fulfilled, therefore, impugned order (Annexure P-8) cannot be faulted with. It can also be not faulted with for an additional reason that no where in the reply to the show cause notice, transportation of liquor on the basis of forged permit has been disputed.

77. Section 44 of the Excise Act categorically provides for Criminal liability of licensee for acts of servants. This is in addition to the provisions contained in Clause (c) of Section 31(1) of the Excise Act. Section 44 provides that "Where any offence under Section 34, Section 35, Section 36, Section 36-A, Section 38, Section 38-A or Section 39 is committed by any person in the employ and acting on behalf of the holder of a licence, permit



or pass granted under this Act such holder shall also be punishable as if he had himself committed the same, unless he establishes that all due and reasonable precaution were exercised by him to prevent the commission of such offence". Therefore, when Clause (c) of Sub-section (1) of Section 31 is read with Section 44, then it is not open to the petitioners to say that they had not committed any offence under Section 34(2) of the Excise Act, and, therefore, their acts will not be covered.

78. Thus, the judgment of the Hon'ble Supreme Court in case of **Iridium India Telecom Limited** (supra), though it is submitted by Shri Naman Nagrath that since petitioner companies have not been prosecuted and punished for criminal offence, therefore, doctrine of "alter ego" will not be effective, in my opinion, has no application, inasmuch as, what Supreme Court has held is that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offence including those requiring mens rea. The criminal liability of corporation arises when an offence is committed in relation to the business of the corporation by a person or the body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. Mens rea is attributed to corporations on the principle of "alter ego" of the company. While ascertaining the applicability of the judgment of Hon'ble Supreme Court in **Iridium India Telecom Limited** (supra), it is submitted that principles of proportionately is required to be applied by the Court.



79. It is observed in case of **Belfast City Council v. Miss Behavin' Ltd**, (2007) 3 All ER 1007, para 24 HL, wherein it is held that proportionately must be objective. The court must make a value judgment or evaluation by reference to the circumstances prevailing at the relevant time. The principles of proportionately require the Court to apply a three stage test, (1) Whether the objective sought to be achieved is relevant and sufficiently important to justify limiting the fundamental rights; (2) Whether the means chosen to limit that right are rational, fair and not arbitrary; and, (3) Whether the means used impaired the right as minimally as reasonably possible.

80. In case of **Huang Vs. Secretary of State for the Home Department**, (2007) 4 ALL ER 15, HL, in paragraph 19 has held that the judgment on proportionately must always involve the striking of a fair balance between the rights of the individual and the interests of the community.

81. Similarly, it is well settled principle of law that when the question is of pressing social needs and it is to be decided as to whether measures adopted by the legislature is proportionate to the legitimate aim pursued, the Court may have also to show due respect to the judgment of democratically elected representatives. In **Tweed Vs. Parades Commission for Norther Ireland**, (2007) 2 ALL ER 273, (H.L.), it is held that properitory principles is a concept of 'latitude', which recognizes that the Court does not become the primary decision maker on matters of policy, judgment and discretion, so that public authorities are left with room to make legitimate choices. 'Latitute' denotes a particular degree of deference by the Court to public body.



In case of **Ajay Hasia Vs. Khalid Mujib Sehravardi, (1981) 1 SCC 722**, it is held that the fundamental right of equality in Article 14 has also been so construed as to make the concept of reasonableness and non-arbitrariness pervade the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

In case of **Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli, (2007) 6 SCC 81**, it is held that the “State” acting whether as a “landlord” or a “tenant” is required to act bona fide and not arbitrarily and every executive action must be informed by reason.

82. Firstly, liquor business is not a fundamental right and secondly, when the test of proportionately is applied, then on that touchstone also, decision of the authority being within the framework of the Excise Act and the Rules framed thereunder, cannot be faulted with.

83. In fact, Sub-section (2) of Section 31 clearly authorises the authority to cancel any other licence, therefore, the submission made by Shri Naman Nagrath that the show cause notice will relate only to the period when it was issued and not further, is not at all justified because even if that yardstick is applied, then cause of action for the show cause notice is for the year 2011, that being so, in the light of the judgment of Hon'ble Supreme Court in case of **N.S. Sethna** (supra), even show cause notice could not have been issued in the year 2023, but that is not the position, inasmuch as, to fulfill the requirements of Section 31(1), authorizes the State to take action when judgment of conviction was passed by the competent Court.

84. Therefore, when these facts are taken into consideration, then Section



31(2) read with Section 44, so also read with Rule 3(11) of the M.P. Distillery Rules and analogous provisions in other rules, leaves no iota of doubt that the words used in Rule 3(11) of the M.P. Distillery Rules, 1995, which deals with licence D-1 for manufacturing of spirit is to be renewed every year, subject to observance of the Act and the Rules framed thereunder and the condition of the licence. Even Clause V of the Licence provides for cancellation of licence for violation of the terms, therefore, on this touchstone also, act of the Excise Commissioner, cannot be faulted with. In fact in **N.S. Sethna** (supra), the Supreme Court has clearly noted that there is no separate rule or provision conferring power of renewal. There is also no provision in these rules laying down procedure for renewal or fee for such renewal or the condition on which it may be granted, except the insertion in Clause 4 of the word "renewal which only suggests that the renewal is competent."

85. However, in the present case, Rule 3(11) of the M.P. Distillery Rules, 1995, so also Rule 3(12) of the M.P. Foreign liquor Rules, 1996, clearly uses an expression "the licence shall be renewed every year subject to due observance of the provisions of the Act and the Rules framed thereunder and the conditions of the licence" and the Foreign liquor Rules uses the expression that the licence may be renewed on payment of the prescribed fees as aforesaid, subject to the due observance of the provisions of the Act and the Rules made thereunder and the conditions of the licence.

86. Thus, the judgment of **N.S. Sethna** (supra) is distinguishable, inasmuch as, relevant Rules incorporate in specific terms the provisions of renewal,



unlike the Bombay Cinema Rules, which were the subject matter in **N.S. Sethna** (supra). Thus, the judgment of **N.S. Sethna** (supra) is distinguishable on its own facts.

87. As far as reference to the judgment in case of **N. Mani** (supra) is concerned, though it is submitted that if a wrong provision is mentioned, it will not vitiate the exercise of power, but in my opinion, there is no mention of wrong provision in the impugned order of suspension or in the show cause notice, which preceded it. The show cause notice clearly make a mention of conviction of two of the accused persons, namely, Santosh and Omprakash, under Section 34(2) of the Excise Act and also of others under the provisions of the Indian Penal Code for cognizable and non-bailable offences. The impugned order also clearly makes a mention of violation of the provisions contained in Section 31(1)(d), so also that of Section 44 of the Excise Act. Thus, when explicitly the show cause notice dealt with the ambit of Sections 31(1)(c) and (d) of the Excise Act, pointing out the acts of various persons being convicted under Section 34(2) of the Excise Act or under various Sections of the Indian Penal Code and then gave vivid description of some of the acts, leaves no iota of doubt that there are no grey areas of mentioning the incorrect provisions, requiring to filling of gaps in the light of judgment of the Hon'ble Supreme Court in case of **N. Mani** (supra).

88. As far as law laid down in case of **Mohinder Singh Gill and another** (supra) is concerned, it is held that statutory functionaries makes an order passed on certain grounds. Its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons in the shape of



affidavit or otherwise. Otherwise, an order bad in the beginning, by the time it comes to the Court on account of challenge, gets validated by additional grounds later brought on.

89. In my opinion, the facts in the present case are different. The decision of the statutory authority is neither supplemented by fresh reasons in the shape of an affidavit or otherwise, nor is there any intention apparent from the record to cure an order bad in the beginning, inasmuch as the show cause notice and the order of suspension are clear in themselves and contain reasons in the fullest breadth. Therefore, the ratio of law laid down in the case of **Mohinder Singh Gill and another** (supra) too is not applicable to the facts and circumstances of the present case.

90. The Division Bench of this High Court in case of **Rathore and Mehta Associated, Bhopal** (supra) held that fraud vitiates all solemn acts. Fraud means an intention to deceive, whether it is from any expectation of advantage to party himself or from ill-will towards other is immaterial, as held by Hon'ble Supreme Court in case of **Commissioner of Customs(Preventive) Vs. M/S. Aafloat Textiles (I) P.Ltd.& Others, 2009 (11) SCC 18**. Therefore, in terms of the fraud perpetuated in using forged permits to transport foreign liquor, the impugned acts of the respondents, when tested on the touchstone of doctrine of proportionality, cannot be faulted with.

91. In view of above, writ petition fails and is dismissed. Pending application(s), if any, also stands disposed of.



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(VIVEK AGARWAL)
JUDGE

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