



Serial Nos.01 & 02
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No.186/2021 with
MC (WPC). No.13/2025
MC (WPC). No.72/2021
WP(C) No.234/2021 with
MC(WPC) No.87/2021

Date of CAV: 29.08.2025

Date of Pronouncement: 04.09.2025

International Spirits and Wines Association of India a company registered under the Companies Act, 1956 having its registered office at 2nd Floor, Tower 1A, DLF Corporate Park, M.G. Road, Gurugram, Haryana-122002 and represented by Ms. Nita Prannath Kapoor, authorized representative of the petitioner company. Petitioner

Vs.

1. State of Meghalaya represented through Principal Secretary, Excise, Registration, Taxation and Stamps Department, Government of Meghalaya, Shillong, Meghalaya.
2. Commissioner of Excise, Excise, Registration, Taxation and Stamps Department, Government of Meghalaya, Shillong, Meghalaya.
3. Umpohliw Central Bonded Warehouse, represented through its Managing Partner, having its registered office at 9th Mile, Baridua, Ri-Bhoi District, Meghalaya. Respondents

Association of Meghalaya Bonded Warehouses, represented by its President having registered office at Bivar Road, Shillong-793001, East Khasi Hills District, Meghalaya. Petitioner

Vs.

1. The State of Meghalaya, represented by the Chief Secretary to the Government of Meghalaya, Shillong.
2. The Commissioner and Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps Department, Government of Meghalaya, Shillong.
3. The Commissioner of Excise, Government of Meghalaya, Shillong.
4. M/s Umpohliw Central Warehouse, 9th Mile, Baridua, Oppt. CRPF Camp, Ri-Bhoi District, Meghalaya represented by its Managing Partner. Respondents

**Coram:**

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance in WP(C). No. 186 of 2021:

For the Petitioners : Mr. Jishnu Saha, Sr. Adv with
 Mr. A. Mukherjee, Adv
 Mr. K. Tangirala, Adv
 Mr. R. Kharkrang, Adv

For the Respondents : Mr. D. K. Banerjee, Sr. Adv with
 Mr. A. S. Pandey, GA
 Mr. A. H. Kharwanlang, Addl. Sr. GA
 Ms. S. Laloo, GA
 Dr. N. Mozika, DSGI with
 Mr. A. P. Singh, Adv
 Mr. M. L. Nongpiur, Adv for R/3

Appearance in WP(C). No. 234 of 2021:

For the Petitioner : Mr. K. Paul, Sr. Adv. with
 Mr. Philemon Nongbri, Adv
 Mr. S. Chanda, Adv

For the Respondents : Mr. A. Kumar, Advocate General with
 Mr. A. S. Pandey, GA
 Mr. A. H. Kharwanlang, Addl.Sr.GA
 Ms. S. Laloo, GA
 Dr. N. Mozika, DSGI
 Mr. A.P. Singh, Adv
 Mr. M. L. Nongpiur, Adv for R/4

J U D G M E N T

(Delivered by the Hon'ble, the Chief Justice)

Three writ petitions were before this Court.

One was by the International Spirits and Wines Association of India [WP (C) No.186 of 2021] Association of Manufacturers, Bottlers and Suppliers of liquor. The second was by the Association of Meghalaya



Bonded Warehouses [WP (C) No.234 of 2021]. The third was by the Umpohliw Central Bonded Warehouse [WP (C) No.430 of 2024], which is created by the impugned Meghalaya Bonded Warehouse (Amendment) Rules, 2020, made under the Assam Excise Act, 1910 (“the Act”).

The cause of action in the first two writ petitions is more or less similar. The writ petitioners challenge the validity of the said rules and seek an injunction restraining operation of the Central Bonded Warehouse. The third writ petition called in question the authority of the State government to establish more than one Central Warehouse in the State in implementation of the said rules.

During the final stages of hearing of the writ petitions, Umpohliw Central Bonded Warehouse withdraw its writ.

The trade in liquor is very substantial in this State. There is a large market for both foreign and country liquor. These two types of liquor have been defined in the above Act and rules. It goes without saying that this trade involves manufacturing, supply and distribution of this product.

The Act was enacted to, inter alia, regulate this trade throughout the State of Assam and Eastern Bengal within which now falls the present State of Meghalaya. On creation of this State in 1972, it adopted the said Act and the above rules thereunder amended from time to time till 1965.



Up to then and even thereafter there was no grievance of any person with regard to the regulation of the liquor trade in the State.

Under the said rules, the retail price of a bottle of foreign liquor is fixed by the government. This price till the impugned rules came into force, included the price charged by the manufacturers, bottlers suppliers, all taxes levies thereon, the commission of the bonded warehouse and the retailer's margin.

A retailer on assessment of the demand would place requisition on a bonded warehouse which would supply the goods to him upon obtaining it from the manufacturers, bottlers suppliers etc.

The recital to the Assam Excise Act, 1910 states that it was enacted to consolidate and amend the excise law in Eastern Bengal and Assam. It has been made applicable to the State of Meghalaya. According to its preamble, it relates to import, export, transport, manufacture, sale and possession of intoxicating liquors and of intoxicating drugs.

“Intoxicant” has been defined in Section 3(12a) of the Act as meaning any liquor or intoxicating drug.

Section 3(14) describes liquor as follows.

“3(14) “Liquor” means intoxicating liquor and includes all liquid consisting of or containing alcohol; also tari and pachwai in any form; and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.”



Spirit is defined in Section 3(19) as follows:

“Spirit” means any liquor containing alcohol, obtained by distillation, whether it is denatured or not.”

There is further categorisation in Section 4. The state government is given the power to declare by notification which type of liquor would be branded as “country liquor” and which to be branded as “foreign liquor.”

Section 16 is important. It, inter alia, provides that the Excise Commissioner with the sanction of the Board may establish or allow to be run on licence a warehouse where, inter alia, liquor of any kind could be deposited [see section 16(d)].

Now, we come to the provision which has become very contentious in these writ petitions. It is Section 19 which is in the following terms:

“19. Executive privilege of manufacture and supply. – The State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege of manufacturing or of supplying to licensed vendors any country liquor or intoxicating drugs within any specified local area.”

Section 36 of the said Act conferred rule making power on the State. It permitted it to make rules, inter alia, regulating the “deposit of intoxicant in warehouses” and the removal of such articles from warehouses, distilleries or breweries. The Assam Bonded Warehouses rules, 1965 were made. These rules were amended from time to time, lastly in 2020.



The amendment of 15th October, 2020 is the bone of contention. It was to the following effect:

Clause ii(a) was added to rule 2 which defines Central Bonded Warehouse as follows:

“(iia) “Central Bonded Warehouse” means a licensed Central Warehouse where IMFL, Beer, Wine, BIO etc., imported on pre-payment of Excise or Advalorem duty, Import Pass Fee or Transport Pass Fee and Litterage Fee are kept for eventual removal to Bonded Warehouses as provided for in the Meghalaya Bonded Warehouse Rules (The Assam Bonded Warehouse Rules, 1965, as adopted by Meghalaya), and all its extant rules.”

Rule 44 was added which provided for establishment of the Central Bonded Warehouse to be run on licence obtained by a licensee on a licence.

Some of the other material terms and conditions for operation of the Central Bonded Warehouse provided in rule 44 are as follows:

“44. License for Central Bonded Warehouse shall be granted on the following conditions: (1) A license to establish and work a Central Bonded Warehouse in the designated area on prior approval of Government shall be issued by the Commissioner of Excise.

(2) Selection for license to establish and work a Central Bonded Warehouse in the State shall be based on competitive bidding process, open to Individuals, Partnerships firms, Companies, etc.

(3) The base fee for a license to operate a Central Bonded Warehouse shall be Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh) only annually, or as fixed by Government from time to time.

(4) The tenure of the license shall be for ten years. The Commissioner of Excise however, reserves the right to extend the period of the tenure, with prior approval of the State Government,



for any additional period after expiry of the term of the license at the same or revised terms and conditions as awarded.

(5) The Central Bonded Warehouse shall deposit a Security Deposit of an amount equivalent to the awarded annual License fee for a period of ten years pledged to Commissioner of Excise, which shall be forfeited in case of failure to abide by the conditions as laid down in the license or any breach of Meghalaya Excise Act and Rules.

(6) The Central Bonded Warehouse shall operate on a plot of land measuring not less than One Lakh Fifty Thousand square feet which is fully developed for immediate use, duly surveyed and certified by the Deputy Commissioner.

(7) The Central Bonded Warehouse must construct a warehouse or godown having a capacity to hold at least Six Lakh cases of IMFL, Beer, Wine, BIO etc. within a period of four months from the date of issue of license, alongwith a building safety certification from PWD (Building).

(8) The Central Bonded Warehouse shall be eligible to supply only to the bonded warehouses located within the state.

(9) The Central Bonded Warehouse shall have the capacity to supply and deliver all the registered brands of IMFL, Beer, Wine, BIO etc. to the Bonded Warehouses within forty-five days for goods produced in the State and sixty days for goods imported from outside the State.

(10) The Central Bonded Warehouse shall have a minimum stock of all types of brands for three months at any point in time, so that continuous regular supply can be maintained for all Bonded Warehouses throughout the State.

(11) The Central Bonded Warehouse must be made operational within four months from the date of issue of license.

(12) The minimum profit margin eligible for bonded warehouses on their sale to retail IMFL "OFF" and "ON" licenses shall be 8% (eight percent) for IMFL brands only (except Bottle in Origin).

(13) The Central Bonded Warehouse or ex-bond rates of all the imported goods shall be subject to approval by the Commissioner of Excise during the course of annual registration of brands.



(14) On commencement of the Central Bonded Warehouse, the Bonded Warehouses shall lift all the liquor from the Central Bonded Warehouse against the import permits issued by the Commissioner of Excise and cease to import directly from the Companies, Bottling Plants etc.”

The warehouse should have a minimum area of 1,50,000 square feet with a godown to hold at least six lakh cases of IMFL, beer, wine, BIO etc. to be acquired within four months from the date of issue of the license in their favour.

The warehouse should have the capacity to supply/deliver all the registered brands of the descriptions of foreign liquor to the bonded warehouses within 45 days for goods produced in the State and 60 days goods imported from outside the State. At the same time, the amended rules provided that the Central Bonded Warehouse would have to maintain a minimum stock of the above brands for three months at any point of time.

A bonded warehouse would be entitled to a pocket margin and that too a minimum pocket margin of eight per cent for IMFL brands only (except bottle in origin).

Against the import permits issued by the Commissioner of Excise, the bonded warehouses would have to lift the liquor from the Central Bonded Warehouses only and would have no right to import directly from the companies, bottling plants etc.



The letter of the International Spirits and Wines Association of India dated 13th May, 2021 to the Commissioner and Secretary (Excise & Taxation Registration & Stamps), Government of Meghalaya, Shillong pointed out that the Central Bonded Warehouse had been superimposed over the chain of bonded warehouses without any apparent Government control or regulation. Any commission specified by the Government to be paid to the Central Bonded Warehouse should be borne from the revenue collected by it. The letter implored the government to take a decision whether to absorb the increase in price of liquor because due to the operation of the above notification or to increase the price at the end of the retailer.

The principal grounds on which the said rules are challenged in the writ petitions are stated in short in the following paragraphs. In support of or contesting these grounds, extensive arguments were made by all learned counsel.

Mr. Jishnu Saha, learned Senior Advocate made submission for the petitioner in WP (C) No.186 of 2021. He opened his submission by imputing mala fide to the government. He said that the Central Bonded Warehouse was a partnership firm which was formed on 1st September, 2020. The said rules were promulgated on 15th October, 2020. This



formation of the partnership firm was made in full collusion and connivance of the partners with the government so that the rules were framed and put it into force expeditiously creating a Central Bonded Warehouse. The contract for its operation would be granted to this new partnership firm.

The creation of the Central Bonded Warehouse by the impugned rules is violative of Article 19(1)(g) of the Constitution of India as it does not pass the test of reasonableness. Article 19(6) clarifies that in no way prevents the State or a Corporation controlled by the State to carry on any business, to the exclusion, complete or partial of others. This provision of the Constitution was interpreted so as to mean or imply that only the State could carry out a monopolistic business but a private individual could not be empowered by the State to do so.

By the impugned rules, the State was trying to create a monopoly in foreign liquor business in the Central Bonded Warehouses for regulation of trade in foreign liquor in Meghalaya in general with particular reference to its importation from bottlers, distillers, suppliers, storage in a warehouse and ultimate sale to consumers through retailers.

Relying on Section 19 of the Meghalaya Excise Act adopting the Assam Excise Act, 1910 (hereinafter referred to as “the Act”) it was



sought to be argued by Mr. Jishnu Saha, learned Senior counsel for the petitioner in (WP (C) No.186 of 2021) that the provision in the said Section for the State to grant exclusive right of manufacture or supply of any country liquor or intoxicating drug, necessarily, meant and implied that such monopolistic trade could not be authorised by the State to be carried out in respect of foreign liquor, by a private individual or by corporate.

Mr. Saha invoked the legal maxim *expressio unius est exclusio alterius* which means that mention of a particular “person or thing in the law” means exclusion of any other person or thing. He cited ***Gram Panchayat, Village Kanonda, Tehsil Bahadurgarh, District Rohtak, through its Sarpanch v. Director, Consolidation of Holdings, Haryana, Chandigarh & ors*** reported in ***1989 Supp (2) SCC 465*** where Mr. Justice Saikia delivering a three-judge bench judgment of the Supreme Court relied on this doctrine to say when there is mention of a “certain person or thing in the law” an intention to exclude all others from this operation may be inferred.

Again, relying on ***Union of India v. Shiv Dayal Soin & Sons (P) Ltd. & ors*** reported in ***(2003) 4 SCC 695***, a judgment by Mr. Justice Khare for the bench where the maxim was applied in another way to infer that



mention of a particular thing in one part of the statute its absence in another part would imply its conscious omission from that part, Mr. Saha argued that Section 19 referred to a monopoly which could not be granted by the State for manufacture and supply of foreign liquor but it could only be granted to manufacture and sale of country liquor.

Thus, the impugned rules were opposed to Section 19, violative of it and ultra vires the Act, it was argued.

Following up this argument, he cited *Kunj Behari Lal Butail & ors v. State of H.P. & ors* reported in (2000) 3 SCC 40, *Additional District Magistrate (Rev.) Delhi Admn. v. Siri Ram* reported in (2000) 5 SCC 451, *State of T.N. & anr v. P. Krishnamurthy & ors* reported in (2006) 4 SCC 517, *U.P. Avas Evam Vikas Parishad v. Jainul Islam & anr* reported in (1998) 2 SCC 467 and *Subhash Chand Aggarwal v. Union of India & ors* reported in 2011 SCC Online Del 3033, to argue that a substantive right granted by the parent Act could not be taken away by subordinate legislation.

It was also said that the impugned rules violated Article 14 of the Constitution. The bonded warehouses were deprived of a “level playing field”. They had to accept whatever liquor was made available to them by the Central Bonded Warehouse. They would be losing their right of



obtaining supplies from bottlers, distillers and of their autonomy in importing foreign liquor into Meghalaya by negotiations with the vendors.

Citing *Kerala Bar Hotels Association v. State of Kerala* reported in 2015 SCC Online SC 1385, it was argued that State can create a monopoly for itself or any agency created by it for manufacture, possession, sale and distribution of liquor but could not create a monopoly in favour of a private entity.

The autonomy granted to the Central Bonded Warehouse was unregulated in terms of stock to be procured, stocked and supplied. The absence of indication of profit margin for Central Bonded Warehouse would result in arbitrary action by the warehouses. The Central Bonded Warehouse would only be interested in brands that gave them more commission. This would be contrary to consumer preference. This could result in leading brand owners to exit the market. Before the impugned notification, the bonded warehouse used to earn a commission of eight per cent. Now, commission would be payable to the Central Bonded Warehouse. This additional commission would be payable without any corresponding increase or improvement in the service provided by the bonded warehouses in the liquor trade. It would impact the price and interfere with the “level playing field”.



Mr. Saha cited a line of cases decided by the Supreme Court which propounded the following propositions of law: Under the Constitution, the State had the right to carry out monopoly business in liquor by itself or through agents subject to the conditions under Article 19(6) of the Constitution. Article 47 of the Constitution did not curtail the right of the State to carry on liquor trade or to regulate or restrict its production, supply and consumption. This restriction includes imposition of reasonable restriction by the State for conduct of the trade. A citizen also enjoyed the fundamental right to carry on trade in liquor subject to its regulation by the State under Article 19(6) of the Constitution including its right to monopoly business in relation to the product (see the cases in ***Khoday Distilleries Ltd. v. State of Karnataka: (1995) 1 SCC 574***, ***Kerela Bar Hotels Association & anr v. State of Kerela & ors: (2015) 16 SCC 421***, ***Krishna Kumar Narula etc. v. State of Jammu and Kashmir & ors: AIR 1967 SC 1368*** and ***M/s United Spirits Limited v. Uttarakhand Agricultural Produce Marketing Board & ors: 2015 SCC Online Utt 2109***).

That the State could itself or through an agent carry out monopoly business was held in ***Akadasi Padhan v. State of Orissa & ors*** reported in ***AIR 1963 SC 1047***. In the facts and circumstances of that case, the



authorisation of a contractor by a Municipal Board to carry on business at a particular market place was held by the Supreme Court in ***Rashid Ahmed v. Municipal Board, Kairana & ors*** reported in ***1950 SCC 221*** as creation of an illegal monopoly by the State. The State is empowered to grant monopoly rights to a person to carry on a particular business. It is, however, to justify that such right granted to a particular person to the exclusion of others as reasonable restriction of his rights in the facts and circumstances of the case (see ***State of Rajasthan v. Mohan Lal Vyas: 1971 (3) SCC 705***).

The exercise of powers beyond what has been delegated by the legislature is liable to be declared invalid and set aside.

Mr. Paul, learned Senior Advocate appearing for the writ petitioner in WP (C) No.234 of 2021 supplemented the arguments made by Mr. Saha. He cited ***Kumari Shrilekha Vidyarthi & ors v. State of U.P. & ors*** reported in ***(1991) 1 SCC 212*** which followed ***Ramana Dayaram Shetty v. International Airport Authority of India: (1979) 3 SCC 489*** and ***Kasturi Lal Lakshmi Reedy v. State of Jammu and Kashmir:(1980) 4 SCC 1***. He argued while the government had an unfettered right to formulate and implement policies, such right was conditioned by the requirements of reasonableness and compliance with constitutional



provisions and absence of arbitrariness. He argued citing *Kavalappara Kottarathil Kochuni & ors v. States of Madras and Kerela & ors* reported in *AIR 1960 SC 1080* that any restriction imposed by the government under Article 19(5) had to bear a reasonable relation to the object sought to be achieved, serve public interest and should be reasonable. Any restriction had to be gauged under Article 19(6) subjectively. Discretionary powers granted to administrative authorities must be exercised reasonably (see *Union of India & anr v. G. Ganayutham: (1997) 7 SCC 463* and *Messrs Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh & ors: (1954) 1 SCC 1*).

It was also said that the impugned rules did not respect consumer preference. It was also said that the Central Bonded Warehouse did not have any additional functions. It was done to accommodate a business organization which was formed just few weeks before. No benefit to the trade was brought by the impugned Rules. This could impact the market.

On behalf of the State, Mr. Debal Kumar Banerjee, learned senior Advocate permitted by the learned Advocate General to make submissions before him, made the following submission:

By the impugned rule, no monopoly trade in liquor was sought to be created by the State by creation of the Central Bonded Warehouse. It



only regulated part of the trade. To be a monopoly, the Central Bonded Warehouse ought to have been given the powers of totally controlling of the manufacture, supply, distribution and sale of liquor in the State.

The said Act and rules had a reference to “warehouse” particularly in Section 16 (Heading) and Section 36(f) which implied that the legislature contemplated more than one warehouse. The creation of the Central Bonded Warehouse could not be said to be beyond the scope of the statute. The said Act covered a wide range of subject pertaining to the liquor trade in this State and a reservoir of powers to the government to control that trade. One of such subjects and power concerned the regulation of manufacture and supply of country liquor by subordinate legislation.

In Section 19, the legislature had given power to the State government to designate any area and grant exclusive right of manufacturing and supplying country liquor to a person in that area. It was only partial exercise of that reservoir of powers that the legislature had exercised in the Act by stipulating that in a particular area, a particular person may be designated to manufacture and supply country liquor. On a plain and simple reading of the words of the section, there was neither express nor any implied stipulation that this meant that the State could not



regulate manufacture, supply and distribution of foreign liquor. Section 19 did not prevent the State from creating a Central Bonded Warehouse for more integrated, streamline and transparent trade for foreign liquor in the State by allotting specific functions to the Central Bonded Warehouse.

Creation of a Central Bonded Warehouse to regulate trade in liquor under the said Act and rules was contemplated and could not be said to be ultra vires the Act or any rule.

The government was the best judge of the nitty-gritties of an economic policy, identifying the economic circumstances that require attention, the detailed plan and method of tackling it, the formulation of a policy to do so and its implementation. This was the prerogative of the government. The work was specialised and conceptualised by the government and consulting experts. The Courts should not ordinarily interfere unless it was shown that it was unconstitutional or violative of any law or most arbitrary, mala fide, unreasonable or perverse. Not falling into any of the above categories, the said policy embodied in the impugned Rules should not be interfered with by this Court.

With the leave of the Court, the State government filed an affidavit affirmed on 26th August, 2025 at the close of hearing of the matter to demonstrate that after coming into force of the impugned rules, there had



been a dramatic increase in the sale of foreign liquor of various premium brands between 2021 and 2024-25. A table annexed to the said affidavit where the figures include cases of the brand, which case comprising of 12 bottles is set out below:

“Brand		20-21	21-22	22-23	23-24	24-25
Imperial Blue	ISWAI	66268	95714	145972	285638	468514
No.1 Reserve & No.1 luxury	ISWAI	192433	269365	207404	259410	272125
Officer Choice Blue	Non ISWAI	412325	487916	429215	298868	206845
Royal Challenge	ISWAI	6159	12379	11725	11317	18145
Royal Stag	ISWAI	335263	634057	764619	682227	615668
Old Monk	ISWAI	11230	13450	16100	18500	21550”

Hence, the introduction of the amendment according to learned counsel had augmented the business of various bonded warehouses and not affected it.

Learned Counsel emphasised that under the Central Warehouse system it was obliged to keep in stock the demand made by retailers as routed through the Bonded Warehouse. By this method the trade in foreign liquor was open, transparent, competitive and smooth, more than it was under the regime of Bonded Warehouses. This was so because the Bonded Warehouses had the scope of manipulating demand and supply. He also added that if the Central Warehouse was guilty of not attending to requisition made by the retailers routed through the bonded warehouses,



it would be open to any aggrieved person to make a complaint on which the government would promptly act.

The price of a liquor bottle was fixed by the government. This price had several components namely, the manufacturer/bottler/supplier's price, taxes and levies, commission to Central Bonded Warehouse and bonder warehouse and retailer margin. The brands that could be sold were also approved by the government.

The present sanctioned commission rate for bonded warehouse was eight per cent minimum and ten per cent for the Central Bonded Warehouse.

The Central Bonded Warehouse was required to maintain a minimum stock. It was also required to obtain the stock on requisition from the bonded warehouse which made the requisition on demand from retailers. It was required to make supply to the bonded warehouse within a particular time. If it did not comply with the above stipulations, it was liable to action under the said Act and rules.

Inspite of the Central Bonded Warehouse being allowed ten per cent commission, the record would show that as depicted in the affidavit dated 26th August, 2025 the turnover in the sale of foreign liquor increased most



appreciably between 2021 and 2024-25. It followed that the bonded warehouses were running larger profits.

Learned counsel submitted that a policy must be gauged from the benefit it brought to the public at large and not from any loss or losses caused to a particular individual. Instead of lowering the profit margin of bonded warehouses, the creation of the Central Bonded Warehouse had in fact increased it. It also checked “revenue leakage”, streamline supply from manufacturers and to the Central Bonded Warehouse after payment of taxes ensures proper and complete tax collection. Movement of stock from manufacturers, bottlers and supply to 45 bonded warehouses gave enough scope of clandestine supply of liquor without payment of tax and other levies.

Mr. Banerjee, contended that a private entrepreneur had no fundamental right to exclusively and without restriction trade in intoxicating liquor and was always subject to reasonable restrictions imposed under Article 19(1)(g) and Article 19(6) of the Constitution. The State had plenary power to regulate, restrict or prohibit such trade in public interest. He cited *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer & ors* reported in (1954) 1 SCC 18, *Khoday Distilleries Ltd. & ors v. State of Karnataka & ors: (1995) 1 SCC*



574 and *International Spirits and Wines Association of India v. State of Haryana & ors: (2019) 20 SCC 294*. The right of the State to regulate liquor trade was part of its general right to impose reasonable restrictions on business in public interest in Article 19 of the Constitution as laid down by the Supreme Court in *T.B. Ibrahim, Proprietor, Bus Stand, Tanjore v. Regional Transport Authority, Tanjore* reported in *(1952) 2 SCC 590* and *Viklad Coal Merchant, Patiala & ors v. Union of India & ors* reported in *(1984) 1 SCC 619*. He also emphasised the basic principles with regard to the exercise of power of courts to interfere with government policy. Even less was the power to interfere in policy involving economic decisions. Interference would only be made if it could be shown that any policy was unconstitutional, illegal, arbitrary, discriminatory, mala fide or grossly unreasonable (see *Swiss Ribbons Private Limited & anr v. Union of India & ors: (2019) 4 SCC 17*, *State of M.P. & ors v. Nandlal Jaiswal & ors: (1986) 4 SCC 566*, *Small Scale Industrial Manufactures Association (Registered) v. Union of India & ors: (2021) 8 SCC 511* and *Association of Registration Plates v. Union of India & ors: (2005) 1 SCC 679*).

Learned Advocate General supplemented the submission of Mr. D.K. Banerjee, learned Senior Advocate. He added that in Section 16 and



Section 36(f) of the said Act there was mention of “warehouses”. Now, Section 36 contained the powers granted to the State legislature to frame rules when it referred to warehouses it necessarily implied that the legislature conceptualised more than one warehouse. Therefore, a Central Bonded Warehouse was not beyond the contemplation of the legislature and hence, not beyond the scope of the Act. He further submitted that there were ample checks and balances in the rules to ensure proper functioning by the bonded warehouses including the Central Bonded Warehouse. He referred to the letter of International Spirits and Wines Association of India dated 13th May, 2021. His purpose of relying on the letter was only to show that the Association’s apprehension was confined to reduction of commission of bonded warehouses on the creation of the Central Bonded Warehouse. The association urged the government to absorb the commission in the revenue earned by it through sale of liquor. There was no assertion of invalidity of the impugned rules.

Thereafter, Dr. N. Mozika, learned Senior counsel made submission on behalf of the Central Bonded Warehouse. He argued that the licence was granted to his client on 26th March, 2021. It has started operation from 26th July, 2021. It was compulsory for Central Bonded Warehouse could only deal with registered brands with the government. There had been



significant increase in sale in general of foreign liquor in the State. Dr. Mozika cited paragraph 34 of *Collector of Customs, Madras & anr v. Nathella Sampathu Chetty & anr* reported in *AIR 1962 SC 316*. He argued that the mere apprehension that an enactment may be misused or implemented illegally would not be a ground to declare it as ultra vires if otherwise it was valid.

Findings, observations and conclusions:

In an Act of the legislature whether parent or amending, there are recitals to explain the state of affairs or “mischief” which necessitated such enactment or amendment. This is normally not the practice in the case of framing of rules and regulations under it.

There is no recital in the impugned rules.

In the Act and parent rules there are provisions for plurality of warehouses. (Section 16 and Section 36(f))

Article 19 (6) is clarificatory of Article 19 (1 to 5) of the Constitution to the extent that carrying on business by the State in a particular field to the exclusion of private entrepreneurs cannot be taken as an unreasonable restriction on the freedom of citizens to carry on trade and business. This provision in no way prevents the State from authorising a private entrepreneur to do monopoly business in a particular trade if the



facts and circumstances require. However, this kind of decision has to satisfy the test of reasonableness because by such action the State is preventing other private entrepreneurs from doing business in that area.

A monopoly in our opinion would refer to exclusive control of an entire industry, business or service at all levels and in all areas of its operation by a particular person, to the exclusion of all others. Regulation by the legislature of a part of a business by authorising a person or entity to carry it out more effectively in public interest cannot be called creation of a monopoly of a private person by the legislature or by the State.

Assam Bonded Warehouses Rules, 1965 (as adapted by Meghalaya) by the Meghalaya Bonded Warehouse (Amendment) Rules, 2020 and creation of a Central Bonded Warehouse did not setup a monopoly business but regulated a part of the trade in foreign liquor in the State of Meghalaya.

Even if setting up of the Central warehouse is treated as setting up of a monopoly business, still, the government in the given facts and circumstances was entitled to authorise a private entrepreneur to do monopoly business in the trade under the Assam Excise Act, 1910 and the Assam Bonded Warehouse Rules, 1965 framed thereunder as amended from time to time.



A plain, ordinary and grammatical as well as purposeful interpretation of Section 19 of the Assam Excise Act, 1910 makes it plain that it only refers to the power of the government to regulate or channelise the business or trade in country liquor. In no way does it exclude or restrict the reservoir of powers under the said Act to frame subordinate legislation to otherwise regulate the trade which includes creation of the Central Bonded Warehouse for procurement, storage and distribution of foreign liquor. The doctrine of “*expressio unius est exclusio alterius*” has no application to this case.

The promulgation of the Bonded Warehouse (Amendment) Rules, 2020 has to be seen as a policy decision of the government. We have found nothing in this policy which could be termed as unconstitutional as violative of Articles 14, 19 or 21 or illegal or arbitrary or unreasonable or perverse.

At least from the face of the notification, the businesses of the bonded warehouses are not interfered with. They would only have to buy or procure the liquor from a Central Bonded Warehouse, instead of buying it from the open market.



The rules contain detailed provision for the stock to be maintained by the central bonded warehouse and the mode and manner in which it has to supply this stock to the bonded warehouses on their demand.

The price of a bottle of liquor is fixed by the excise authority. This price is inclusive of all taxes, levies and commissions. This is a safeguard against misuse of the impugned rules.

The version of the government is that the demanded quantity of liquor, of the description and quality ordered by the retailers, on the basis of demand by consumers, would have to be adhered to by the Central Bonded Warehouse. Creation of the Central Bonded Warehouse removes the likelihood of bonded warehouses entering into transactions or arrangements with select manufacturers, bottlers and brand owners to trade only in specific brands of liquor where the margin of commission is more.

Up to date there is nothing on record to show that any demand for liquor made by consumers and routed through retailers and bonded warehouses has not been fulfilled by the central warehouse.

The only legitimate grievance which the writ petitioners have against the impugned rules is that to maintain the fixed price the commission receivable by the bonded warehouses has to be shared with



the Central Bonded Warehouse, resulting in diminution of the margin of profit or earning.

It has not been shown that the earning of a bonded warehouse or manufacturers, bottlers and the suppliers has fallen after the coming into force of the rules. The said affidavit filed by the State, in fact shows that sale of premium brands foreign liquor has substantially increased since coming into force of the impugned rules.

This is a particular brand of subordinate legislation which is also a policy statement. On the face of it, it is not invalid. However, it is possible for the State to apply or implement this rule in derogation of the Constitution or fail to take action against those who misuse it. In that case, the rule itself becomes a monster and is liable to be struck down by the Court as invalid and as an illegal and bad policy. The principle in *Collector of Customs, Madras & anr v. Nathella Sampathu Chetty & anr* reported in *AIR 1962 SC 316* would not apply. It only applies when the application of the Act causes injury. It would not apply when the Act or rule itself is converted into an engine of oppression.

If for example, the Central Bonded Warehouse is used as an engine to throttle the business of other bonded warehouses by the State allowing a large commission to it and reducing the commission of bonded



warehouses thereby causing a huge diminution in their turnover from business, then the notification becomes a monster or arbitrary or unreasonable promoting the business of the Central Bonded Warehouse and causing extraordinary loss to the bonded warehouses.

Allowing the Central Bonded Warehouse to favour one bonded warehouse against others or a group against the rest resulting in significant detriment to the business of others would produce the same result.

Failing to absorb the extra and unreasonable amount of commission the Central Bonded Warehouse would claim and earn against the taxes received by the State or against a reasonably raised price would have the same result.

We were really pleased to receive the assurance of learned counsel for the State that it was willing to apply and work the rules out according to the guidance and direction given by the Court below:

Directions:

The state government is to strictly monitor the business carried out by the central bonded warehouse with the other bonded warehouses and with the manufacturers, distillers and suppliers.

By an administrative order the State shall fairly and reasonably fix the commission to be charged by the Central Bonded Warehouse.



It required, this extra amount of commission is to be first absorbed by the government by reducing its taxes on a bottle of liquor and thereafter consider enhancing the price of a bottle, if required reasonably, so that the enhancement in price is minimal and does not affect the commission earned by the bonded warehouses or the market demand.

The government is to closely monitor the activities of the Central Bonded Warehouse in relation to each of the other bonded warehouses so that the stock and description of liquor made available by Central Bonded Warehouse to each of the bonded warehouses is more or less the same as it was before the introduction of the impugned rule.

The government shall ensure that the Central Bonded Warehouse does not discriminate between the bonded warehouses and carries on its business in a fair and transparent manner.

If the government receives any complaint from any interested person with regard to procurement, supply and distribution by the Central Bonded Warehouse to the bonded warehouses it shall immediately entertain the complaint and take necessary measures to solve the problem.

Therefore, as of now, the rules stand but subject to its application and regulation properly and reasonably by the government in accordance with our observations and directions above.



In those circumstances, we declare that the impugned rules are valid and intra vires the Constitution and the laws.

In case of infraction of our directions by the State resulting in misuse of the rules the writ petitioners shall have a fresh cause of action to file a proceeding to declare them as invalid and ultra vires.

Both the writ petitions are disposed of declaring the Meghalaya Bonded Warehouse (Amendment) Rules, 2020 as constitutional and valid but subject to compliance by the respondent-State with our directions above for implementation of the said rules. We grant liberty to the petitioners to apply afresh for quashing of the said rules in case of disobedience to our directions or failure to implement the rules in accordance with our directions.

Miscellaneous applications are also disposed of.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice

Meghalaya
04.09.2025
"*Lam* DR-PS"