

2022 LiveLaw (Del) 178

IN THE HIGH COURT OF DELHI AT NEW DELHI
V. KAMESWAR RAO, J.
MARCH 08, 2022

W.P.(C) 3647/2022 & CM APPL. 10823/2022

BHAGWATI TRANSFORMER CORP. AND ORS *versus* GOVERNMENT OF NCT OF DELHI

Petitioners Through: Mr. Mukul Rohatgi, Sr. Adv. with Mr. Tanmaya Mehta, Mr. Sanjay Abbot, Mr. Anurag Sahay and Ms. Shreya Gupta, Advs.

Respondent Through: Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Rahul Mehra, Sr. Adv., Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar, Mr. Siddharth Krishna Dwivedi and Mr. Chaitanya Gosain, Advs.

W.P.(C) 3674/2022 & CM APPL. 10893/2022

MAGUNTA AGRO FARMS PVT. LTD *versus* GOVT. OF NCT OF DELHI & ANR.

Petitioner Through: Mr. Sajan Poovayya, Sr. Adv. with Mr. Subham Jain, Advs.

Respondents Through: Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Rahul Mehra, Sr. Adv., Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar, Mr. Siddharth Krishna Dwivedi and Mr. Chaitanya Gosain, Advs.

W.P.(C) 3682/2022 & CM APPL. 10926/2022

M/S ORIGIN APPLIANCES PVT. LTD *versus* GOVT. OF NCT OF DELHI

Petitioner Through: Mr. N. P. Singh and Mr. Abhinav Verma, Advs.

Respondent Through: Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Rahul Mehra, Sr. Adv., Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar, Mr. Siddharth Krishna Dwivedi and Mr. Chaitanya Gosain, Advs.

W.P.(C) 3823/2022 & CM APPL. 11358/2022

M/S NOVA GARMENTS PVT. LTD *versus* GOVT. OF NCT OF DELHI

Petitioner Through: Mr. N. P. Singh and Mr. Abhinav Verma, Advs.

Respondent Through: Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Rahul Mehra, Sr. Adv., Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar, Mr. Siddharth Krishna Dwivedi and Mr. Chaitanya Gosain, Advs.

W.P.(C) 3857/2022 & CM APPL. 11472/2022

M/S PATH2WAY HR SOLUTIONS PVT. LTD *versus* GOVT. OF NCT OF DELHI

Petitioner Through: Mr. N. P. Singh and Mr. Abhinav Verma, Advs.

Respondent Through: Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Rahul Mehra, Sr. Adv., Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar, Mr. Siddharth Krishna Dwivedi and Mr. Chaitanya Gosain, Advs.

W.P.(C) 3835/2022 & CM APPL. 11377/2022

M/S CHANMEET LEASING AND FINANCE PVT. LTD. *versus* GOVT. OF NCT OF DELHI

Petitioner Through: Mr. N. P. Singh and Mr. Abhinav Verma, Advs.

Respondent Through: Dr. Abhishek Manu Singhvi, Sr. Adv. and Mr. Rahul Mehra, Sr. Adv., Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar, Mr. Siddharth

Krishna Dwivedi and Mr. Chaitanya Gosain, Advs.

V. KAMESWAR RAO, J.

CM APPL. 10823/2022 in W.P.(C) 3647/2022

CM APPL. 10893/2022 in W.P.(C) 3674/2022

CM APPL. 10926/2022 in W.P.(C) 3682/2022

CM APPL. 11358/2022 in W.P.(C) 3823/2022

CM APPL. 11472/2022 in W.P.(C) 3857/2022

CM APPL. 11377/2022 in W.P.(C) 3835/2022

1. By this order, I shall decide the above applications seeking interim relief, inasmuch as to stay the impugned order.

2. The common case of the petitioners in these petitions, as contended by their counsel, is a challenge to an order dated February 28, 2022, whereby the Commissioner (Excise) of the Department of Excise, Entertainment and Luxury Tax, Government of NCT of Delhi („Government of Delhi“, hereinafter) has directed that the L7Z licensees shall not give concession, rebate or discount on the Maximum Retail Price („MRP“, for short) of liquor and to strictly abide by Rule 54(3) of the Delhi Excise Rules, 2010 („Rules of 2010“, hereinafter). It is the submission of Mr. Mukul Rohatgi, learned Senior Counsel that some time in the month of June 2021, the Delhi Government approved the new Excise Policy for the year 2021-22. This policy set out the framework for various aspects pertaining to liquor business for the year 2021-22. Consequent to the Excise Policy being approved, the Government of Delhi floated tenders on June 28, 2021 and August 13, 2021 for zonal licences for retail vends of Indian and foreign liquor. The petitioners are private players who participated in the tenders floated on June 28, 2021 and August 13, 2021 and have emerged as successful bidders for different zones within the NCT of Delhi.

3. According to him, the Excise Policy and the Tender expressly permit the grant of discount / rebate / concession by the retail licensees. Clause 4.1.9(viii) of the Excise Policy towards the tail end states that “*The licensee is free to give concession, rebate or discount on the MRP*”. He also referred to Clause 3.5.1 of the Tender, which also states that “*The licensee is free to give concession, rebate or discount on the MRP*”. He submits that the grant of discount is based on the principles of free market and fair competition in operation. According to Mr. Rohatgi, Rule 53(1) of the Rules of 2010 had prohibited licensees from granting concession, rebate, discount and gift of liquor. However, by way of Delhi Excise (Amendment) Rules, 2021, *inter-alia*, Rule 53(1) of the Rules of 2010 has been omitted. Therefore, it is clear that the law as well as policy and even the Tender permits discounts on MRP. It is his submission that the reliance placed in the impugned order by the respondent on Rule 54 of the Rules of 2010 is clearly erroneous as the same does not relate to discounts. In fact, Rule 54 is inapplicable to the present case, and in any event cannot be cited as a valid basis for the impugned order. Much before the licences were granted, in the pre-bid queries,

the response of the Department of Excise with regard to clarification sought on the maximum limit of the discount permissible on the sale of liquor and also with regard to the question when the price of any liquor is fixed, whether the licensee shall be bound to sell such liquor at such price, the answer was “*not related to Tender*”. In other words, it is his submission that the licensees were within their rights to provide maximum discount on the sale of liquor and the price of the liquor could not have been regulated by the respondent. That apart, it is his submission that the rules of the game cannot be changed after the game has begun. Power to amend the Tender does not exist after the bids are finalized and licences are issued. In this regard, he has drawn my attention to Clause 15.2 of the Tender document.

4. He stated, by the impugned order, the respondent completely takes away the petitioners’ right to make business decisions with regard to discount, concession and rebate, which they are empowered to take under the new Excise Policy and as per the Tender document. In fact, the power to grant discount is an essential part of the new Excise Policy. Hence, the impugned order to discontinue / withdraw an important clause of the Tender document and the Policy is in complete contravention of the Excise Policy. He also stated that the fundamental policy of doing business cannot be changed midway when huge licence fee was levied and is still being demanded.

5. Mr. Rohatgi had also stated that the issue of a bogey of large crowds highlighted in the impugned order is liable to be rejected. If in certain cases, crowd gathered, that does not mean that the discount as a whole should be withdrawn. While the policy and tender places responsibility of maintaining of law and order in the vicinity of the liquor shops upon the licensees, it cannot be denied that it is the primary responsibility of the State and the Police to ensure public order. Given the population of Delhi, the licensees are taking all steps practically possible to ensure compliance of COVID-19 norms. In any case, the Government has opened markets, malls and other spheres of life and hence, the apprehension of spread of COVID-19 as a ground to call upon the petitioners to refrain from giving discounts, so as to discourage crowding, is totally untenable. It is his submission that the counter affidavit filed by the respondent justifying their action on additional facts and grounds, i.e., supplementing reasons which are not part of the impugned order is clearly impermissible in view of the judgment in the case of ***Mohinder Singh Gill v. Chief Election Commissioner 1978 (1) SCC 405***. He further stated that the allegation of the possibility of bootlegging by some unscrupulous customers does not mean that a highly disproportionate action of banning discounts altogether can be taken. The respondents are free to enforce law against customers who may be hoarding liquor. Action should be taken against specific customers rather than shutting down granting of discounts altogether. This would also harm genuine customers, who are deprived of competitive rates. The attempt is only to favour persons who are losing competitive market because of discounts by others. It is the stand of the respondent that certain licensees had complained about discounts granted by others. The very meaning of market forces and competition is that some people will be able to develop commercial arrangement which others cannot. Hence, the mere fact that some licensees are doing better than

others does not mean that there is a misuse of the process. There is a level playing field and all licensees can chose to give or not to give discounts.

6. Mr. Tanmaya Mehta, who had also argued for the petitioners in W.P.(C) No.3647/0022 would also make similar arguments, while stating that earlier there was no power for grant of discounts. The new policy has come by way of Gazette notification dated May 25, 2021. In view of the new vision to encourage private players in the market, liberty has been granted to the licensees, i.e., the petitioners herein, to grant discount on liquor prices. He states the effect of the impugned action is that even though the grant of discount is permissible, it is not being allowed. He states that prohibition should only be resorted to when an attempt to regulate has failed. It is the consistent stand of the respondent that the discount to the extent of 50% or „*buy one-get one free*“, sought to be given, is not a reasonable discount. In other words, they do not deny that a reasonable discount is permissible. Hence, to completely ban the grant of discount is manifestly arbitrary.

7. Mr. Sajan Poovayya, learned Senior Counsel appearing for the petitioner in W.P.(C) No.3674/2022, who is also a retail licensee would make similar submissions as has been made by Mr. Rohatgi. He further stated that Clause 4 of the Excise Policy, more particularly, paragraph 4.1.9 (viii) set forth the pricing mechanism, wherein it is stated that the licensee is free to give concession, rebate or discount on the MRP. The policy envisages a clear method for the Excise Commissioner to fix the MRP and specifically allows the licensees to give any concession, rebate or discount on the MRP so determined as per Clause 4, and hence, the said policy ought to be viewed in the context of the amendment made to Rule 53 of the Rules of 2010, which indicate a categorical intention to permit discounting on the MRP. He also referred to paragraph 7.1 of the terms and conditions of the licence, which permits the licensee to give concession, rebate or discount on the MRP. He stated that the policy, as also the terms and conditions were approved, framed and issued about the same time, the 2021 amendment to the Rules of 2010 were published in the Gazette. However, the same was not made available, which prompted certain entities to approach this Court. Resultantly, the policy and the terms and conditions were made available on July 05, 2021. He, by drawing my attention to the order dated October 28, 2021 issued by the Commissioner (Excise) under Rule 54 of the Rules of 2010 went on to state that concession, rebate or discount on MRP has been allowed in the Excise Policy of 2021-22 to bring competitive forces into effect. Mr. Poovayya stated it is the business decision of the petitioner who was suffering immense losses on account of arbitrary and illegal action of the Excise Department to offer concession, rebate or discount on the MRP in accordance with the relevant Rules and Regulations. He stated that the perusal of the impugned order indicated that the Commissioner (Excise) did not have the power to issue impugned order, which is based on extraneous and suspicious ground and is in direct contravention of the Rules, Policy and the terms and conditions of the tender. This impugned order has resulted in a huge decline in sales of the petitioners.

8. That apart, it is his contention that the reliance placed by the respondent in the

impugned order upon Rule 54(3) of the Rules of 2010 is erroneous. Rule 54(3) only contemplates with regard to the price fixed as whole sale price / retail price and Rule 54 is required to be harmoniously construed with the omission of the erstwhile Rule 53(1) through the Delhi Excise (Amendment) Rules, 2021 and the contemporaneous exposition in the form of the policy, terms and conditions and the tender document, which declared the petitioners are free to give concession, rebate or discount on MRP.

9. Further, the reliance placed by the Commissioner (Excise) on Clause 15.2 is also misplaced, as the said Clause only empowers the Department to amend the e-tender document any time prior to the deadline of submission of bids. Further, the impugned order does not bear a rational nexus with its object, inasmuch as the reasoning that large crowds gather outside liquor stores and they aggravate the rise of COVID-19 cases has no relation with the concession, rebate or discounts. Further, the respondent has not placed any restriction on the functioning of the liquor stores even during the peak of the pandemic and the same was done by the Delhi Disaster Management Authority. Moreover, all other public places are open without any restrictions. The plea of the respondent that the licensees are indulging in various promotional activities through social media and banners / hoardings being placed outside the stores, which is not permissible, also has no nexus with the grant of concession, rebate or discounts. He also states that the petitioner having altered its position to its own detriment on the basis of the representation held out by the Excise Department under the policy, the impugned order shall have the effect of the Excise Department being permitted to change the goal post after the game has begun. He seeks the interim relief as prayed for in the applications.

10. Mr. N.P. Singh, learned counsel appearing for the petitioners in the other four petitions has largely adopted the submissions made by Mr. Rohatgi, Mr.Mehta and Mr.Poovayya. Additionally, he stated, under the Policy, it is only MRP, which has been fixed under Rule 54 of the Rules of 2010 and there is no concept of „*retail price*“ in the new regime and coupled with the right to grant discount, concession and rebate would clearly reveal the power exists with the petitioners as licensees to grant the same and such a power cannot be taken away after the issuance of licences to the petitioners.

11. Dr. Abhishek Manu Singhvi and Mr. Rahul Mehra, learned Senior Counsel appearing for the respondents would justify the impugned order issued by the Commissioner (Excise) in exercise of his power and function under Section 4 of the Delhi Excise Act, 2009, which according to them empowers the Commissioner to regulate, control and monitor the manufacture, possession, import, export, transport, sale and consumption of liquor and other intoxicants. That apart, he has powers to ensure social wellbeing through education and promote responsible drinking. They stated that in terms of Rule 50 of the Rules of 2010, every licensee is bound to comply with the orders issued by the Excise Commissioner from time to time and the impugned order is one such direction which is required to be followed. They stated, that Excise Policy, 2021-22 came into effect on November 17, 2021 whereafter licensees commenced business under 32 zones under new excise regime. The entire

revenue has been subsumed in the licence fee of the L7Z license. They highlighted the fact that Delhi does not have any manufacturing unit for liquor and all liquor in Delhi is imported from other states. The import of liquor in Delhi in the new excise regime attracts a levy of 1% excise duty, as a result of which, the price to retailer comes to be around 35% of the price of liquor. The regulation of liquor trade is of paramount importance due to its injurious health effects and also adverse social impact emanating from excessive and irresponsible drinking. In the new excise regime, the Government allowed rebates and discounts for bringing healthy competition and promoting consumer choice in the liquor trade. There was smooth implementation of the excise policy w.e.f. November 17, 2021. In the month of February, 2022 some of the retail L7Z licensees started giving huge discounts / offers on the MRP of liquor including „buy one get one“ and „buy one get two“ etc. Further, banners and hoardings were put up by the licensees in front of the liquor stores and messages were circulated on social media platforms promoting discounts and luring customers in with freebies. This resulted in huge crowds gathering outside liquor vends leading to law and order issues, particularly, in the backdrop of the pandemic which necessitates the following of social distancing norms. They stated that some people had also started buying liquor in bulk for hoarding and inter-state movement of liquor. On February 11, 2022, the Department of Excise issued an advisory to the licensees to desist from promotion of sale of liquor, as the same was against the mandate of Excise Act and Rules. They highlighted the fact that the Excise Policy 2021-22 was brought to simplify the highly complex and heavily regulated excise regime, and to ensure ease of doing business; not to allow formation of any monopoly or cartel. The object of the Policy is to allow the responsible players in the industry to carry out the trade transparently without resorting to any proxy model and to ensure equitable access of liquor supply to all the wards / areas of Delhi so that there are no unserved and underserved localities, eliminating the problem of spurious / non duty-paid liquor.

12. According to them, the current phase of discounts being offered by some of the licensees is against the mandate and intent of the Excise Act and the new Excise Policy for promoting healthy competition and consumer choice in the market, as a few licensees, for short term monetary gains, started offering discounts, which was leading to distortions in the market. In this regard, a meeting was held by Commissioner (Excise) with L7Z licensees on February 15, 2021 wherein certain licensees stated that there should be a benchmark of discount and the concept of Minimum Support Price should be introduced by the Government as the price war between the licensees was leading to distortions in the market. People were being driven and lured to purchase liquor from the stores offering huge discounts and a few other licensees were running into losses due to depleted sales. They have drawn my attention to the counter affidavit to highlight the fact that few licensees have shown more than 177% sale growth in the month of February vis-a-vis the sale made in the months of December, 2021 and January, 2022. They have also highlighted the average monthly sales of liquor for the year 2018-19 being 136.7 lakh litres; for the

year 2019-20 being 132.11 lakh litres and in February 2022 the sale was 245.08 lakh litres. The figure of February 2022, according to them, is a two-fold increase as compared to the previous monthly average sales. This increase is because of the discounts and not because of any increase in consumption, leading to illicit hoarding, black marketing and inter-state movement of liquor. They highlighted that the Government cannot be privy to such behavior which is contrary to the reforms brought about, wherein a nominal duty has been levied on the import of liquor. Further, the discounts of the current nature as given in the month of February, 2022 by a few licensees having huge financial wherewithal, who started giving 50% or more discount from their approximate retail margin of around 60-65% and luring people to buy more liquor than required for personal consumption and giving an extra push to the illicit channels dealing with trade of illicit liquor. Further, the licensee is bound to sell liquor at a price fixed by Commissioner (Excise) under sub-rule 1 and 2 of Rule 54 of the Rules of 2010. Without requisite amendment in the Delhi Excise Act, 2009 and the Rules of 2010, the discounting cannot be allowed and the same is in violation of the provisions of the Act and the Rules.

13. They have also highlighted the fact that the data regarding stocks being procured by L7Z licensees from wholesalers through valid transport permits was also analyzed, and on comparison it is noted that there is no equitable distribution of stock from three major wholesalers to the retailers, as few retailers, perhaps in agreement and collusion with the wholesalers procured bulk stock for their vends and started giving huge discounts at the cost of sales of other L7Z licensees, which has resulted in a distortion in the market. The discontinuation of discounts / rebate / concession of the MRP of the liquor has matched the sale in the month of December, 2021.

14. Dr. Singhvi had also stated that the case of the petitioners argued by the counsel is on the premise that they have a fundamental right for carrying out trade in liquor under Article 19(1)(g) of the Constitution of India, which according to him, is a misplaced argument in view of the judgment of the Supreme Court in ***Khoday Distilleries Ltd. and Ors. v. State of Karnataka and ors. (1996) 10 SCC 304***. The only argument available to the petitioners is based on Article 14 of the Constitution of India, which has no applicability in the facts of this case as highlighted above.

15. Dr. Singhvi had also submitted that power to fix MRP shall also encompass the power to regulate the related components like discounts / rebate / concession. During submission, he has highlighted the fact that a discount of 50% and above is an unreasonable discount, leading to predatory pricing of liquor. He also stated that competitiveness does not mean that liquor be sold as „buy one get one free“. In other words, the second bottle in such an offer is sold for free. The competitiveness is, to have a level playing field to all licensees. He also stated that it may so happen that the respondent may, on advise, contemplate permitting reasonable discounts. But in any case the present impugned order cannot be faulted and the interim relief sought for, if granted would lead to illegalities, which have been highlighted by the respondent as noted above. He also stated that the counter affidavits have been filed, with whatever material was presently available with the Department. In fact, detailed

counter affidavits would be filed by the respondent to enable this Court to consider the issue on all aspects, before deciding the legality of the impugned order.

16. In rejoinder, Mr. Poovayya has contested the submission of Dr. Singhvi based on ***Khoday Distilleries Ltd. and ors. (supra)*** by relying on the judgments of the Supreme Court in the cases of ***Kerala Bar Hotels Association & Ors. v. State of Kerala (2015) 16 SCC 421*** and ***Justice K.S. Puttaswami (Retd.) v. Union of India (2017) 10 SCC 1*** and stating that if the State is permitting trade in liquor through licenses, then in the eventuality of any action which is violative of the licence agreement, the licensees can take recourse to Article 19(1)(g) of the Constitution of India. Similarly, Mr. Mehta has also stated, that the impugned order has all the facets of arbitrariness attracting protection under Article 14 of the Constitution of India.

17. Having heard and considered the submissions made by learned counsel for the parties, the issue which arises for consideration in these applications is whether the petitioners are entitled to the prayer as made in the applications for staying the operation of the impugned order dated February 28, 2022.

18. The primary submission of the learned counsel for the petitioners is that the Policy / Tender contemplates, a licensee is free to give concession / rebate or discount on the MRP, which power has been taken away by the impugned order. According to them, by the impugned order, the respondent has changed the rules of the game which has already started. Though, the plea is *prima facie* appealing, the stand of the respondent is that the MRP having been fixed by the Commissioner (Excise) in exercise of the power vested with him, as is seen from page No. 159 of W.P.(C) No. 3682/2022 (for brands) and more particularly in view of Rule 54(3), which mandate sale of liquor only at that price, the impugned order is justified.

19. I may state here that the power to fix MRP by the Commissioner has not been disputed by the counsel. Though Mr. Poovayya did make an attempt to contend that Rule 54(3) of the Rules of 2010 contemplate fixation of wholesale price and retail price and not MRP, *prima facie*, I am not in agreement with the submission for the simple reason that Rule 54(1) also contemplate the power of the Commissioner (Excise) to decide the criteria for fixing MRP and as that criteria would lead to the fixation of MRP, Rule 54(3) of the Rules of 2010 shall be applicable.

20. The reliance placed by the learned counsel for the petitioners on Rule 53 of the Rules of 2010, whereby the bar of giving concession / rebate or discount was removed, during the same time, when the Policy was notified shall not mean that the concession, rebate or discount can be read into Rule 54(3) of the Rules of 2010. In this regard, Mr. Mehra had also referred to Clause 3.5.4 of the tender document which reads as under:-

“3.5.4 Every license shall be granted subject to the conditions that the Licensee shall comply with the provisions of the Delhi Excise Act, 2009, the Rules framed there under, terms and conditions for grant of L-7Z and L-7V License and orders issued by the Excise Commissioner from time to time.”

21. Having said that, an issue would arise as to what is the effect of incorporation in the Policy / Tender, the stipulation enabling a licensee to give concession / rebate or discount; whether the impugned order shall have the effect of petitioners being precluded from giving any concession, rebate or discount. In this regard, the submission of Dr. Singhvi was that there can be a reasonable discount, but not in the manner sought to be given by the petitioners as highlighted by the respondents in their counter affidavit, which has the result of predatory pricing for possible short term monetary gains, distortions in the market, alleged hoarding, inter-state transportation of liquor etc. He highlighted the above features on the basis of the statistics, which do indicate *prima facie* that the grant of concession / rebate or discount has resulted in a steep increase in the sales of liquor in the month of February, 2022 as compared to the sales in the month of December, 2021 in certain zones, as against a miniscule rise in other zones. He stated that the stipulation is being mis-utilized for gains. The intent of the stipulation is to have a level playing field to all the licensees. To sell a bottle of liquor free of cost is not healthy competition, but anti competitive, which is clearly impermissible.

22. The reliance also placed by Dr. Singhvi and Mr. Mehra on Section 4 of the Act to contend that the Commissioner (Excise), in exercise of his power, is within his right to intervene in the aforesaid situation, is *prima facie* appealing and the said power is not contested by the counsel for the petitioners.

23. Insofar as the plea of the learned counsel for the petitioners that the impugned order has to be tested on the basis of what has been stated therein and the respondents cannot be allowed to supplement the reasons, which are not part of the impugned order, by relying upon the judgment of the Supreme Court in the case of **Mohinder Singh Gill (supra)** is concerned, suffice to state, the impugned order *inter-alia* reads as under:-

“And whereas, it has been brought to the notice of the Department that as a result of the discounts being offered by the licenses through their retail vends, there are instances reported of large crowds gathering outside the liquor stores leading to law and order problem and causing inconvenience to local population of an area. It is also to be kept in mind that the COVID situation is not yet over and the danger of COVID-19 still persists and therefore the huge crowds is likely to aggravate the rise in the COVIO cases in Delhi.

And whereas it has been reported that such discounting is also leading to unhealthy market practices deployed purely for short term business gains by some of the licensees and is leading to the distortions of the Market. The intent of Government in regard to discounting was to promote consumer choice and healthy competition and determination of price by Market forces. The discounting of this nature was not the objective of the Government while permitting the discounts in the new Excise Regime.

And whereas the licensee are seen indulging in various promotional activities through social media and banners / hoardings being placed outside the stores, which is a non-permissible activity under the Delhi Excise Act, 2009 and Delhi Excise Rules, 2010.”

24. The above do reveal that the respondents have highlighted that the grant of discount has led to market distortions. In the counter affidavit, the respondents in conformity with the above stand has given the statistics / figures to highlight the

market distortions, which has led to increase in sale of liquor in certain zones as against others and alleged hoarding, inter-state transportation of liquor etc. In other words, the counter affidavit cannot be said to be supplementing the reasons, which were not part of the impugned order. In the counter affidavit, the respondents have also highlighted the power of the Commissioner (Excise) under Section 4 of the Act to regulate the sale, consumption, transportation etc of the liquor to justify the impugned order. Hence, the judgment relied upon by the learned counsel for the petitioners in the case of **Mohinder Singh Gill (supra)** is distinguishable on facts.

25. Insofar as the submission of the counsels for the parties, that the reasoning in the impugned order of crowding of the liquor vends during COVID-19 lead to law and order problem and caused inconvenience to the local people are not germane to the prayer of the petitioners to permit discounts, though appealing cannot be accepted as the impugned order also states / highlights market distortion. Hence, *prima facie*, the decision is not perverse.

26. One of the submissions of Dr.Singhvi was that the petitioners cannot plead violation of Article 19(1)(g) of the Constitution of India by relying upon **Khoday Distilleries (supra)**, as in the business related to sale of liquor, Article 19(1)(g) of the Constitution of India would not be attracted. Suffice to state that Mr. Poovayya and Mr. Mehta are justified in relying upon the judgments in the cases of **Kerala Bar Hotels Association (supra)** and **Justice K.S. Puttaswami (Retd.) (supra)**, to counter the submission of Dr. Singhvi that Article 19(1)(g) of the Constitution of India is not applicable. In any case, the right of the petitioners to carry out the trade of sale of liquor through licence is not contested by the respondents.

27. Mr. Mehta during his rejoinder submissions, has contended that the impugned order is also in violation of Article 14 of the Constitution of India. This Court is of the *prima facie* view that in the facts of this case and the position of the Rules, Article 14 shall not come into play. Further, it is only ten licensees, who have come forward to challenge the impugned order as against other licensees, who have also been granted licence for sale of liquor, and are also bound by the impugned order.

28. I agree with the submission of Dr.Singhvi inasmuch as, any stay of the impugned order shall lead to the aforesaid distortions in the market and the subsequent consequences.

29. In view of my above discussion, this Court is of the view that the prayer as made for by the petitioners in these applications cannot be granted. The respondents are granted time to file detailed counter affidavits to the writ petitions within one week from today. Rejoinder within one week thereafter. The applications are dismissed. The aforesaid is only a *prima facie* view.

30. List these writ petitions for hearing on 25th March, 2022.