

WP(C) No. 186 of 2021 with
MC (WPC) No. 72 of 2021
WP(C) No. 234 of 2021 with
MC (WPC) No. 87 of 2021

Date of order: 20.06.2023

International Spirits and Wines vs. State of Meghalaya & ors.
Association of India

Association of Meghalaya vs. State of Meghalaya & ors.
Bonded Warehouses

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioners : Mr J. Saha, Sr Adv. with
Mr A. Goyal, Adv.
Mr A. Mukherjee, Adv.
Mr P. Das, Adv.
Ms C. Ghatak, Adv.
Mr K. Paul, Sr Adv. with
Mr Philemon Nongbri, Adv.
Mrs R. Dutta, Adv.

For the Respondents : Mr K. Khan, AAG with
Mr S. Sengupta, Addl Sr GA
Ms. S. Laloo, GA
Ms A. Thungwa, GA
Mr R. Banerjee, Sr Adv. (VC)
Dr N. Mozika, Sr Adv.
Ms K. Gurung, Adv.

Affidavits have been filed by the respondent No. 3 and by the petitioners.

2. The respondent No. 3 has disclosed its partnership deed which reveals that there are four partners. According to the petitioners, the

curious case of the third respondent central bonded warehouse is that its partnership deed was executed sometime in September, 2020 as if in anticipation of the new policy that was brought into place by the government in October, 2020 and offers invited for a central bonded warehouse in the next month. The petitioners also point out that all the four partners of the third respondent central bonded warehouse also own distilleries, whether individually or with others, and further own or control several bonded warehouses. This by itself, is against a fair process since as owners of distilleries the partners are in the same position as the petitioners herein and as owners of bonded warehouses the partners become clients also of the central bonded warehouse. In the supplementary affidavit filed by the petitioners it is indicated that though the government has fixed an ex-bond rate and the extent of commission to be passed on to the bonded warehouses, variable rates had been sought to be charged or threatened to be charged by the central bonded warehouse from different manufacturers.

3. This, according to the petitioners, would be completely against there being a level playing field since the higher rates charged from certain manufacturers and the lower rates charged from certain other manufacturers will have an impact on the quantum of supply and the products that ultimately reach the retailers' shelves. In addition, the petitioners claim that there are certain incentives which are selectively offered by the CBW or proposed to be offered that may further distort the price mechanism. At the same time, the petitioners point out that it is the considered stand of the State that it will not interfere in pricing as that should be determined by market forces.

4. The essence of the petitioners' contention is that if different sets of rules are applied to different suppliers of liquor to the CBW, the CBW is in a monopolistic position to control the quantum of supplies obtained and even though the CBW may ensure that it takes supplies from every manufacturer, yet the quantum of the supplies would be dependent on the extent of income or profit that the CBW is able to glean from the relevant transactions.

5. In the previous regime, when there were several bonded warehouses, the manufacturers or distillers would enter into individual agreements with the bonded warehouses and, though the terms thereof could be different, there would have been a level playing field and agreements entered into at arm's length. The petitioners submit that just as if all the bonded warehouses formed a cartel and dictated terms to the manufacturers, some manufacturers may have benefitted while others may have suffered, the CBW, in effect, is doing or intending to do the same.

6. Prima facie, an element of prejudice is made out, justifying the institution of the present proceedings. At the end of the day, it is for the State to ensure that rules are in place that do not allow a solitary entity that has replaced a group of entities to indulge in monopolistic practices or dictate terms to the manufacturers or distillers or be in a position to decide which product and of what amount would land on the retailers' shelves. The State should know better and should bring in rules that will allow the demand at the level of the individual buyers to direct the supply of the product rather than a State-appointed entity taking into account its profit-making exercise for deciding the same.

7. Since the CBW seeks time to ascertain whether it is charging differentially from different manufacturers and distillers or is making certain rebates and concessions selectively available to some manufacturers and distillers, let the matter stand over for three weeks. The State will do well to address the several issues indicated herein to ensure that there is a level playing field and that the manufacturers and distillers are not discriminated against or favoured by the CBW whether directly or indirectly.

8. List on July 18, 2023.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
20.06.2023
"Sylvana PS"

