

3rd N.J. Yasaswy National Moot Court Competition on Constitutional Law

MOOT PROPOSITION

BEFORE THE HON'BLE SUPREME COURT OF ARYA LAND

The State of Manati & Others, Petitioner(s)

V.

Confederation of Indian Alcoholic Beverage Companies & Another, Respondent(s)

Arya Land is a sovereign Nation and its Constitution, Laws, Institution and Social Ethos are substantially similar to that of Union of India. Manati is a State in that Federal Democratic country Arya Land. Only 11% of population of Manati lives in urban areas, which is lowest in Arya Land. Additionally, almost 58% of Manatians are below the age of 25, giving Manati the highest proportion of youth than any other State of Arya Land. Manati has a variable and diverse climate. Its temperature is subtropical in general, with hot summers and cool winters. Manati has emerged as a brewery hub with major domestic and foreign firms that set up production unit in the state. Three major firms- United Breweries Group, Danish Brewery Company, Karlsberg Group and Cobra Beer. Manati is visited by many tourists from around the world, with about 24 million tourists visiting the state each year.

In the State of Manati, though Manati Prohibition Act, 1938, has been enacted, however, this Act has not been enforced. What has, however, been in force is the Manati Excise Act, 1915, which is regulatory in nature, but it still, incorporates the provisions for absolute *prohibition* in the sense that Section 19 (4) states:

“Notwithstanding anything contained in this Act and the Dangerous Drugs Act, 1930 (Act 2 of 1930), the State Government, may by notification, prohibit the possession, consumption or both by any person or class of persons or subject to such exceptions, if any, as may be specified in the notification, by all persons in the State of Manati or in any specified local area, of any intoxicant either absolutely or subject to such conditions as it may prescribe.”

The Govt. of Manati in the year 2014 introduced Excise Policy, 2014, which led to significant increase in the number of liquor vends giving rise to increased collection of excise duty. This apart, the Excise Policy, 2014, curtailed the tendency of the monopoly in the trade, by

allowing transparency in the process of allotment of shop and, thus, efforts were made to curb the illegal trading.

Excise Policy, 2014, though resulted in unexpected increase in excise duty in the State, some negative aspects also surfaced in as much as it was noticed that most adverse impact was on the poorest class of people, particularly, in rural areas, and, under these circumstances, the State Government felt the need to reconsider its Excise Policy, 2014, and decided to frame New Excise Policy, 2015.

The State Government introduced, in the year 2015, an Excise Policy, which was published in the official gazette, on 21.12.2015. This policy is known as New Excise Policy, 2015 (hereinafter referred to as 'the NEP'). This policy, nowhere, contemplates immediate and complete prohibition on consumption of alcohol. The scheme, notified by the Government in the form of New Excise Policy, 2015, was to obviously guide its future actions. In this policy, there was, admittedly, nothing, which shows or authorizes the State Government to immediately prohibit trade in Indian Made Foreign Liquor (hereinafter to be referred as 'IMFL'/foreign liquor), though it did provide for sale of IMFL/foreign liquor, in restricted areas only, through single source, namely, Manati State Beverage Corporation Limited (hereinafter referred to as 'the MSBCL').

There is no doubt that New Excise Policy, 2015, contemplated implementation of *total prohibition*; but in a *phased manner*. It is, thus, of paramount importance to note that the New Excise Policy, 2015, envisaged *total prohibition, albeit in a phased manner* and not whimsically or inconstantly.

The underlying idea of the NEP was that *total prohibition* would be brought about gradually and in a *phased manner* so that the society becomes ripe and ready to understand, realize and accept the necessity of having *total prohibition* in order to ensure that no draconian methods is required to be adopted for the purpose of making the State free from consumption of *alcohol*. Therefore, the State decided to discontinue or *prohibit* sale of *country liquor* completely, but permitted manufacture and trade in IMFL/foreign liquor though in urban areas only. This did not, however, debar the population of rural areas to purchase and consume IMFL/foreign liquor within the urban areas.

Therefore, the NEP announced that in the first phase, only *country liquor* and *spiced country liquor* shall be banned all over the State and no licence for the same would be granted from

1st April, 2016; whereas, with effect from 1stApril, 2016, *foreign liquor/IMFL* would be available in *urban areas* only at the level of Municipal Corporation and Municipal Council. All vends shall be “*off*”. All bars and all restaurants, located in areas other than Municipal Corporation and Municipal Council, shall cease to operate and those permitted, within the territorial areas of Municipal Corporation and Municipal Council, shall sell only *foreign liquor/IMFL*. The Manati State Beverages Corporation Limited shall be the authorized body to operate these vends/shops.

As a means of enforcement of the policy so adopted, various other decisions were taken, such as, transportation of *foreign liquor/IMFL* under digital lock system under supervision and the MSBCL was to mandatorily keep one depot for *foreign liquor/IMFL* in all districts.

The NEP reflects the State Government’s effective measure to ensure that rural public voluntarily moves towards *prohibition of alcohol* and to achieve this objective, *social movement* was necessary. De-addiction centres were, therefore, initiated to be opened in all districts.

In no uncertain words, the NEP made it clear that the New Excise Policy, 2015, shall be reviewed by an eleven member high powered committee headed by the Chief Secretary of the State and the NEP also made it clear that in order to achieve the aims and objects of the policy, necessary guidelines framed shall be approved by the said committee. The Committee was to issue guidelines and take decisions for opening new shops as per requirement, however, keeping in view that the coverage of foreign liquor shops from the view point of *prohibition*, tourism, etc. Further, this Committee was also to fix guidelines in respect of possession, consumption or sale in the army establishments. The NEP came into force with effect from 01.04.2016.

From a minute and collective reading of the NEP, as a whole, it would become transparent that under the policy, a clear decision was taken to stop manufacture and sale of any form of *country liquor* with effect from 01.04.2016. However, so far as *foreign liquor/IMFL* including beer is concerned, the NEP clearly predicated creation of monopoly of the MSBCL for the exclusion of private trade and, further, it restricted the sale to municipal areas only and, in the process, completely excluded rural areas from sale of not only *country liquor*, but also foreign liquor/IMFL. Bars and restaurants could operate only in municipal areas and not in rural areas. In fact the policy empowered the High Level Committee to suggest opening of more shops, if necessary.

There is, thus, nothing in the policy, which indicated the State Government's resolve to resort to immediate *prohibition of foreign liquor/IMFL* too; rather, it contemplated sale and consumption of foreign liquor/IMFL, in restricted geographical area, through a monopolist State agency.

Most importantly, the NEP made it known to everyone that *complete prohibition* was the objective to be achieved by the State Government, but this objective was to be achieved in a *phased manner* and it was the Committee, constituted under the NEP, which was meant to guide the Government with regard to make the State free from sale and consumption of liquor, i.e., a stage, where the State would have *complete prohibition*.

In Order to implement NEP, 2015, on or about 12.03.2016, the MSBCL invited manufacturers, located not only within the State of Manati, but also manufacturers, importers and distributors, located outside the State of Manati, to supply to MSBCL *foreign liquor/IMFL* for sale through MSBCL's vends established in urban areas for onward sale to bars and restaurants in urban areas and also to consumers in urban areas.

MSBCL also issued advertisements for recruitment of staff. The licenses of manufacturers of *foreign liquor/IMFL*, including beer, were renewed for the year 2016-17. Therefore the licenses of the bar and restaurants were naturally renewed, in urban areas, for the year 2016-17 in as much as the earlier licenses were valid up to 31.03.2016 only. Thereafter, the bars and the restaurants, immediately, purchased stocks for sale or put their indents with the MSBCL on payment of money.

The MSBCL issued circulars to the district authorities to take possession of unsold stocks of *country liquor* and *destroy* the same. Similar directions were issued in March, 2016, by the MSBCL to the district authorities to make necessary inventories and take, consequently, possession of unsold stocks of *foreign liquor/IMFL* lying with various dealers/retailers of rural areas, on the close of 31.03.2016, in as much as their licenses were not to be renewed before restoration of such stocks to the MSBCL so that the MSBCL could pay the retailers accordingly.

The contents of the New Excise Policy, 2015, not only acknowledges but also unfolds, in clear terms that even after 31.03.2016, everyone, including the State and MSBCL, were to proceed with the assurance that the sale of *foreign liquor/IMFL* would continue, though the sale would be channelized through the monopoly of the MSBCL in urban areas only.

Interestingly enough, pursuant to the NEP, a Bill, proposing necessary amendments of the Manati Excise Act, 1915, was introduced in the Legislative Assembly. The object and reasons were for effective implementation of New Excise Policy, 2015. The new provisions require to be incorporated in place of various sections of Manati Excise Act, 1915. The Bill was to be introduced on 30.03.2016 and was passed unanimously, both in the Legislative Assembly and in the Legislative Council, on 31st of March, 2016. The proposed amendment make the following changes :-

(i) *“In exercise of the powers conferred under Section 19 (4) of the Manati Excise Act 1915 (as amended by Manati Excise (Amendment) Act 2016),*

“The State Government thereby imposed an absolute ban on the manufacture, bottling, distribution, sale, purchase, possession and consumption of country liquor by any manufactory, Bottling Plant, license holder or any person in the whole of the State of Manati with effect from 01 April, 2016.”

(ii) *“In exercise of the powers conferred under Section 30 of the Manati Excise Act 1915 (as amended by Manati Excise (Amendment) Act 2016),*

Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.—

Whoever, in contravention of provision of this Act or of any rule or order made or notification issued under this Act or in contravention of any condition of any license or permit or pass, renewed under this Act or without a valid license, permit or pass issued under this Act shall be punishable with imprisonment for a term not less than ten years but which may extend to imprisonment for life and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

(iii) *“In exercise of the powers conferred under Section 76 (2) of the Manati Excise Act 1915 (as amended by Manate Excise (Amendment) Act 2016),*

Offences to be Cognizable and Non-Bailable.—(1) All offences under this Act shall be Cognizable and Non-Bailable and provisions of Code of Criminal Procedure, 1973 (Act 2 of 1974) shall apply.

(2) Notwithstanding anything mentioned in subsection (1) above, nothing in Section-360 of Code of Criminal Procedure, 1973 (Act 2 of 1974), Section-438 of Code of Criminal Procedure, 1973 (Act 2 of 1974) and Probation of Offenders Act 1958 (20 of 1958) shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

However, on 05.04.2016, the State Government, in purported exercise of powers under Section 19(4) of the Act, as amended, issued, all of a sudden, the impugned notification, which reads as under:

“Notification No. 11/Nai Utpad Niti-01.03/2016-1485, dated 5th April, 2016. – In exercise of the powers conferred under Section 19(4) of the Manati Excise Act, 1915 (as amended by Manati Excise (Amendment) Act, 2016), the State Government hereby imposes ban on wholesale or retail trade and consumption of foreign liquor by any license holder or any person in the whole of the State of Manati with immediate effect.”

The State has, thus, all of a sudden made a complete ‘U’ turn from its New Excise Policy, 2015.

The validity of Section 19 (4) of the Manati Excise Act, 1915, as amended by the State Legislature, on 31.03.2016, as well as the consequential notification, dated 05.04.2016, issued by the State Government, imposing thereunder a complete ban on wholesale, retail trade and consumption of foreign liquor in the whole State of Manati, with immediate effect, have been put to challenge.

Aggrieved by the decision of the Government and calling it a ‘*Tughlaqi Farman*’, Confederation of Arya Alcoholic Beverage Companies & International Spirit & Wines Association of Arya Land filled a Civil Writ Application before the High Court of Judicature at Manati, to quash the “*Notification No. 11/NaiUtpad Niti-01.03/2016-1485, dated 5th April, 2016*”, issued by Govt. of Manati, which was heard and ultimately allowed.

The writ application was allowed in the favour of petitioner i.e. Confederation of Arya Alcoholic Beverage Companies & International Spirit & Wines Association of Arya Land.

Manati govt. has challenged the High Court verdict of September 30, 2016, which had quashed the notification banning consumption and sale of Liquor in the State.

On October 7, 2016, the Apex Court had stayed the operation of Manati High Court judgement quashing the state’s law banning sale and consumption of all types of liquor.

The Supreme Court of Arya Land is now hearing the case on a Special Leave petition, on the following issues:-

1. Whether the right to consume alcohol is a fundamental right and any infringement or intrusion into the said right, by means of legislation or otherwise, would amount to violation of right to privacy and, therefore, constitutionally untenable?
2. Whether complete ban on the occupation of manufacturer and dealer of beverage/spirit industry is justified and reasonable?
3. Whether total ban is efficient in achieving the objective of the ban and other viable measure for attaining the said objective?
4. Whether the notification dated 05.04.2016 is in conflict with Notified New Excise Policy, 2015 and with the object of the Act and is unreasonable, unjust & arbitrary?

Frame the issue accordingly and submit the memorial from both the side.

Note: 1) Assume that for the purpose of this case, Arya Land Constitution, other laws and legal System are identical with those of Republic of India.

2) It is encouraged that participant should draft their issues too.