IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA,

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

WRIT PETITION No. 10304 of 2024

ASSOCIATED ALCOHOLS AND BREWERIES LIMITED
Versus
UNION OF INDIA AND OTHERS

Appearance:

Shri Piyush Mathur - Senior Advocate with Shri Amit Dubey - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the respondent No.1/Union of India.

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

WITH

WRIT PETITION No. 25377 of 2023

GREAT GALLEON VENTURES LIMITED WHOLESALE COUNTRY LIQUOR SUPPLIER OF MADHYA PRADESH GOVERNMENT
Versus
UNION OF INDIA AND OTHERS

Appearance:

Shri Mallikarjun Khare - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the respondent No.1/Union of India.

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

<u>WRIT PETITION No. 13623 of 2024</u>

OASIS DISTILLERIES LIMITED
Versus
UNION OF INDIA AND OTHERS

<u>Appearance:</u>

Shri Mallikarjun Khare - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the respondent No.1/Union of India.

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

<u>WRIT PETITION No. 13706 of 2024</u>

BAPUNA ALCOBREW PRIVATE LIMITED (ERSTWHILE GWALIOR ALCOBREW PRIVATE LIMTED)

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Sameer Kumar Shrivastava, Shri Ruchir Jain and Shri Surbhit Saxena - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the respondent No.1/Union of India.

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

WRIT PETITION No. 14030 of 2024

AGRAWAL DISTILLERIES PRIVATE LIMITED

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Rohan Harne - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the respondent No.1/Union of India.

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

WRIT PETITION No. 26997 of 2024

VINDHYACHAL DISTILLERIES PRIVATE LIMITED
Versus
UNION OF INDIA AND OTHERS

Appearance:

Shri Siddharth Sharma - Advocate and Shri Shashank Sahu - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the respondent No.1/Union of India.

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

WRIT PETITION No. 40830 of 2024

DCR DISTILLERY PRIVATE LTD
Versus
UNION OF INDIA AND OTHERS

Appearance:

Shri Mohammad Aadil Usmani - Advocate for the petitioner.

Shri Sunil Kumar Jain - Assistant Solicitor General with Shri Suyash Mohan Guru - Deputy Solicitor General (through VC) for the *respondent No.1/Union of India.*

Shri N. Venkat Ramanna Naidu - Senior Advocate with Shri Shoeb Hashan Khan and Shri Anans Hasan Khan - Advocate for the respondents No.2 and 3.

Dr. S. S. Chouhan - Government Advocate for the respondent/State.

Reserved on : 31.08.2026

Pronounced on : 17.09.2026

Per: Vivek Rusia, J.

Since common questions of law are involved in these writ petition, therefore, they were heard analogously and are being decided by this common order.

2. The present batch of writ petitions under Article 226 of the Constitution of India has been preferred by the petitioners, primary manufacturing distilleries and bottling units operating within the State of Madhya Pradesh challenging the legality & validity of orders dated 20.3.2024, 28.7.2023 & 04.8.2020 passed by the respondent No.2-Competition Commission of India (hereinafter referred to as the "CCI") in Suo Motu Case No. 05/2020. Thus, the petitioners specifically challenge the initiation order dated 04.08.2020 passed by respondent No.2 under Section 26(1) of the Competition Act, 2002; the consequential Investigation Report dated 31.03.2023 submitted by the respondent No.3/Director General; the procedural order dated 28.07.2023 passed by respondent No. 2 accepting the redacted report and directing circulation of only the non-confidential version;

and the substantive procedural order dated 20.03.2024 whereby the respondent No. 2 rejected the petitioners' preliminary objections regarding jurisdiction and decided to proceed with the inquiry under Section 26(8) of the Act.

Brief facts of the case are given hereunder: -

3. The petitioners are commercial distilleries engaged in the manufacture, rectification, bottling, and wholesale supply of country liquor ('desi madira' in plain and spiced/masala variants) exclusively within the territorial limits of Madhya Pradesh. The supply of country liquor across the 51/52 administrative districts of the State is undertaken through annual or multi-year tender processes floated by the Excise Department of the Government of Madhya Pradesh under the statutory framework of the Madhya Pradesh Excise Act, 1915, and the statutory rules framed thereunder.

4. The genesis of the impugned proceedings traces back to Audit Report No. 1 on the Revenue Sector of the Government of Madhya Pradesh for the Financial Year 2016–17, prepared by the Comptroller and Auditor General of India (hereinafter referred to as the 'CAG'). In the said audit observations, the CAG commented on the tender process conducted by the State Excise Department between the years 2012–13 and 2016–17, observing that the same distilleries were emerging as successful L-1 bidders in identical districts with narrow price variations, allegedly indicating the possibility of collusive bidding or market allocation.

5. On the strength of un-tabled copy of the said CAG Report for FY 2016–17, the respondent No. 2 registered Suo Motu Case No.05/2020. On

04.08.2020, the respondent No. 2 passed an order under Section 26(1) of the Competition Act, 2002 (hereinafter referred to as the "2002 Act"), holding that a *prima facie* case of bid-rigging and horizontal market sharing under Section 3(3) read with Section 3(1) of the 2002 Act existed, and accordingly, directed the respondent No. 3/Director General to conduct an investigation into the affairs of eight named distilleries.

6. During the course of investigation, the Director General not only investigated the distilleries but also summoned and recorded the depositions of high-ranking State officials, including the Principal Secretary (Excise) and the Excise Commissioner of Madhya Pradesh, to ascertain the rationale behind the State's tender conditions, bottling directives and price determination policies. The Director General also carried out search and seizure operations at the premises of the distilleries, seizing digital devices, emails and physical records.

7. On 31.03.2023, the respondent No. 3 submitted a voluminous Investigation Report comprising over 1,200 pages. In paragraph 5.10 of the said report, the Director General specifically recorded that none of the opposite parties had claimed confidentiality over their pleadings or submissions. Notwithstanding this express observation, the Director General *suo motu* bifurcated the report into a 'confidential version' and a 'non-confidential (redacted) version,' blacking out material portions of documents, analysis and third-party communications.

8. On 28.07.2023, the respondent No. 2 took the Director General's Investigation Report on record and forwarded only the redacted, non-

confidential version to the petitioners, inviting their objections and suggestions. The petitioners raised preliminary objections asserting that the initiation was *void ab initio* for want of jurisdiction; the CAG report could not have been relied upon under Article 151(2) of the Constitution; the M.P. Excise Department was the sole statutory sectoral regulator, and that the unauthorized *suo motu* redaction of the report haS severely prejudiced their right of defence.

9. On 20.03.2024, respondent No. 2 declined to halt its proceedings or refer the matter to the State Government under Section 21A, and decided to proceed with the inquiry. Consequently, the petitioners approached this Court under Article 226 of the Constitution of India, wherein ad-interim protection against coercive steps was granted, and the matter was heard on the question of maintainability and jurisdiction.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

10. Learned senior counsel for the petitioners submitted that under Entries 8 & 51 of List II (State List) of the Seventh Schedule to the Constitution of India, the State Legislature possesses exclusive and plenary legislative competence over intoxicating liquors, encompassing production, manufacture, possession, transport, purchase, and sale. Senior counsel placed heavy reliance on nine-Judge Constitution Bench judgment of the Supreme Court in ***State of U.P. v. Lalta Prasad Vaish, (2024) 17 SCC 1***, which reaffirmed that Parliament lacks legislative competence to control the field of potable alcohol merely by making a declaration under Entry 52 of List I read with Article 246. He urged that when Parliament itself is

constitutionally barred from enacting direct legislation over potable alcohol, a statutory authority created under an Act of Parliament (the CCI) cannot indirectly encroach upon, supervise, or penalize transactions occurring within the exclusive state excise framework.

11. Learned senior counsel further submitted that country liquor is not an open-market commercial commodity governed by ordinary market forces of demand and supply. The manufacture, movement, price and allocation of country liquor in Madhya Pradesh form a closed, rigidly monitored statutory framework under the M.P. Excise Act, 1915, the M.P. Distilleries Rules, and the M.P. Country Spirit Rules. Every step is strictly regulated and an Assistant Excise Officer is permanently posted at each distillery premises. Further, the bottles cannot be moved without statutory transit passes and labels, formulas and alcohol content are prescribed by the State Government. The petitioners are mere licencees executing State orders with no autonomy over production volumes or consumer pricing.

12. Learned senior counsel emphasized on paragraph 24 of the State Government's counter-affidavit, which demonstrates that 50% to 55% of the retail price goes to the State exchequer as excise duties, 35% to 40% constitutes the retail contractor's margin, and a restricted margin of barely 10% to 15% is left for the distilleries to cover raw material, manufacturing and transport costs. The State Excise Department pre-fixes the base rate as well as the maximum selling price, leaving a narrow difference of ₹1 to ₹5. The tender requires successful bidders to match the lowest bid (L-1), and the final allocations are subjected to approval by the State Cabinet. Hence, the

tender framework is an administered statutory process where distillers have no room to exploit consumers or alter prices.

13. Learned Senior Counsel additionally also submitted that the field regarding tender manipulation is already occupied by State statutory authorities. Under Rule 6 of the General Application Rules framed under Section 62 of the M.P. Excise Act, the District Collector is expressly empowered to inspect bids and cancel any tender or auction where there is reason to believe that the bid is collusive, non-genuine or intended to create a private monopoly. Since an express statutory mechanism exists within the State law to tackle bid-rigging and monopolies, the CCI has no jurisdiction to supersede the local statutory authority.

14. Learned senior counsel also submitted that the entire foundation of the Section 26(1) order rests on the CAG Report for F.Y. 2016–17. Under Article 151(2) of the Constitution of India, the reports of the CAG relating to the accounts of a State must be submitted to the Governor, who shall cause them to be laid before the Legislature of the State. Until a CAG report is tabled before the Legislative Assembly and examined by the Public Accounts Committee (PAC), it remains a privileged, internal document and that is not a part of the public domain. He relied upon decision in ***Centre for Public Interest Litigation v. Union of India, (2013) 7 SCC 1*** to argue that CAG findings are subject to legislative debate and departmental replies, and the courts or statutory tribunals cannot place reliance upon them as gospel truth to initiate adverse proceedings. In the absence of a lawful complaint from a private person or a formal reference by the State, the CCI had no

constitutional or statutory access to this document under Section 19(1) of 2002 Act.

15. Learned senior counsel has also placed extensive reliance on ***Competition Commission of India v. Bharti Airtel Ltd. & Ors., (2019) 2 SCC 521*** to submit that where a sector is governed by an expert statutory sectoral regulator (in this case, the M.P. Excise Department), the market regulator (CCI) cannot usurp jurisdiction in the first instance. The Supreme Court affirmed the Bombay High Court's ruling that until the sectoral regulator returns findings on jurisdictional facts and regulatory breaches, the CCI is ill-equipped to intervene and its action is premature. He further urged that if the CCI harboured suspicion regarding tender conditions or price uniformity, it was statutorily mandated to make a reference to the State Government under Section 21A of the Competition Act, rather than initiating an adversarial investigation.

16. Learned senior counsel also submitted that the Director General and the CCI committed a fundamental economic error by equating parallel bidding behaviour with illegal cartelization. Relying on ***Rajasthan Cylinders and Containers Ltd. v. Union of India, (2020) 16 SCC 615***, he urged that in a market characterized as an oligopsony—where there is only one buyer (the State Government) and a handful of licensed sellers subject to capacity caps (e.g., maximum cap of 2 crore proof litres)—identical or near-identical bid pricing is the natural, inevitable outcome of 'conscious parallelism' and market interdependence. Suppliers quote close to the pre-fixed base price merely to remain in the fray, which is a recognized, legitimate market

condition and not proof of a conspiratorial cartel under Section 3(3) of 2002 Act.

17. Relying on ***Competition Commission of India v. Steel Authority of India Ltd. (SAIL), (2010) 10 SCC 744***, learned Senior Counsel submitted that while an order under Section 26(1) is administrative, the Commission is legally bound to record minimal independent reasons demonstrating the formation of a *prima facie* opinion. The order dated 04.08.2020 reflects failure to apply its mind to the M.P. Excise Act, ignoring the presence of a sectoral regulator, and merely copying of paragraphs of the CAG's report in verbatim. A void *prima facie* order cannot be retrospectively validated by materials gathered subsequently during an investigation.

18. Learned senior counsel submitted that under Regulation 35 of the CCI (General) Regulations, 2009 (as amended in 2022), confidentiality can only be granted upon a specific, reasoned application made by a party demonstrating commercial injury. The Director General having explicitly recorded in paragraph 5.10 that no party claimed confidentiality, acted wholly without jurisdiction in *suo motu* redacting the report. By serving a truncated non-confidential report, the CCI has deprived the petitioners of the actual evidence, electronic data and third-party communications relied upon, thereby crippling their ability to file an effective reply under Section 26(8) and violating principles of natural justice.

19. Learned senior counsel submitted that the CCI exercises quasi-judicial functions that culminate in civil and financial penalties under Section 27. Relying on ***State of Gujarat v. Utility Users' Welfare Association, (2018)***

6 SCC 21, Union of India v. R. Gandhi, (2010) 11 SCC 1, and the Division Bench judgment of the Delhi High Court in ***Mahindra Electric Mobility Ltd. v. CCI, 2019 SCC OnLine Del 8032***, he contended that the presence and participation of a qualified Judicial Member is mandatory for adjudicatory functioning. The continued functioning of the respondent No. 2 in the absence of a Judicial Member renders its proceedings legally vulnerable, and the mere pendency of an SLP against the ***Mahindra judgment (supra)*** does not stay its binding effect.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2 (CCI):

20. The learned Additional Solicitor General for the respondent No. 2 submitted that the Competition Act, 2002, is an enactment traceable to Entry 21 of List III (Concurrent List) of the Seventh Schedule ('Commercial and industrial monopolies, combines and trusts'). He submitted that there is no conflict between the State's power to regulate/tax liquor under List II, Entries 8 & 51, and the Parliament's power to prevent anti-competitive agreements under List III, Entry 21. The CCI is not challenging the State's excise policy, fixing duties or regulating potable alcohol. It is a solely investigating independent horizontal anti-competitive conduct, collusive bid-rigging, and geographical market allocation amongst private bidders under Section 3(3) of the Act.

21. The learned Additional Solicitor General submitted that while the State has the constitutional privilege to prohibit trade in potable alcohol under Article 47 as *res extra commercium*, once the State chooses not to enforce prohibition and permits private parties to manufacture and sell liquor

under commercial licenses, such activity constitutes trade and commerce [See:***Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574***)]. Relying on the three-Judge Bench decision in ***Coal India Ltd. v. Competition Commission of India, (2023) 10 SCC 345***, he further submitted that under Section 2(h) of the Competition Act, only core sovereign functions (atomic energy, currency, defense and space) are excluded from the definition of an 'enterprise'. Even government companies, statutory monopolies and entities operating under strict regulatory regimes or Article 39(b) remain fully subject to the Competition Act, when engaging in economic activity.

22. The learned Additional Solicitor General further contended that under Section 19(1) of the Competition Act, the Commission is empowered to inquire into contraventions *suo motu* based on its "own knowledge or information received." The Commission does not require a formal complaint from a private citizen or a state reference to act upon. The CAG report was not treated as a conclusive finding of guilt, but merely as an informational trigger that had raised *prima facie* suspicion. The Additional Solicitor General distinguished ***CPIL v. Union of India (ONGC's case)*** by pointing out that in that case, a writ of mandamus was sought, based solely on a CAG report, which the Supreme Court declined. Here, no penalty was imposed on the basis of the CAG report, instead it was merely used as a starting point to direct to carry out an investigation under Section 26(1) of 2002 Act.

23. The learned Additional Solicitor General also argued that the petitioners' attempt to confine the case to the CAG report is completely untenable because the Director General conducted a comprehensive,

independent investigation spanning 1,200 pages. His findings are based on independent primary evidence unearthed during search and seizure operations, including:

i. Thousands of email exchanges and internal corporate records demonstrating advance determination of tender rates;

ii. WhatsApp group communications among distillery representatives operating under the unregistered pseudonym 'M.P. Distillers Association,' explicitly agreeing on district-wise quota allocations; and

iii. Arrangements to submit deliberate cover bids (surrogate bidding) in identified districts to ensure that designated distillers won at predetermined rates.

Counsel submitted that this independent evidence of cartelization exists entirely outside and independent of the CAG report.

24. The learned Additional Solicitor General also putforth that the reliance on ***Bharti Airtel (supra)*** is entirely misconceived. In the said case, dispute arose out of contractual clauses of interconnection agreements (POIs), directly governed by the TRAI Act, an enactment with an express Dispute-resolution Tribunal (TDSAT) actively seized of the exact dispute. Relying on the decision in Division Bench in the case of ***Competition Commission of India v. Star India/Geostar*** (which has been affirmed by the Supreme Court), he stated that where allegations involve core cartelization, market sharing, and bid-rigging under Section 3, the CCI's jurisdiction is paramount and is not ousted by the existence of a statutory licensing body. Furthermore, Sections 21 and 21A are purely directory, enabling statutory

consultation, and do not constitute a mandatory bar or jurisdictional condition precedent to an investigation under Section 26 of 2002 Act.

25. Relying upon ***CCI v. SAIL, (2010) 10 SCC 744*** the learned Additional Solicitor General submitted that an order under Section 26(1) is purely administrative, inquisitorial and preliminary in nature, determining no civil rights and imposing no penalties. The present writ petitions are grossly premature as the proceedings are only at the stage of Section 26(8) of 2002 Act. The petitioners have been provided with the non-confidential version of the Director General report and have every opportunity to submit their replies, seek cross-examination and contest the evidence before the Commission. An efficacious alternative statutory remedy is provided under Section 53B (appeal to the NCLAT) and the extraordinary writ jurisdiction under Article 226 ought not to be exercised to stall an on-going statutory inquiry.

26. The Additional Solicitor General also submitted that the Director General bifurcated the report into confidential and non-confidential versions to protect commercially sensitive third-party business data, pricing compositions, and internal corporate secrets gathered across 11 enterprises. If the petitioners genuinely require access to redacted materials for their defense, the statutory framework under Regulation 35 permits them to apply to the Commission for the constitution of a 'Confidentiality Ring.' The furnishing of a non-confidential report does not violate natural justice when an established regulatory mechanism exists to inspect protected records upon executing appropriate undertakings.

27. The Additional Solicitor General submitted that the Commission is constituted strictly in terms of the Competition Act, 2002, as enacted by Parliament. The principles laid down in ***Union of India v. R. Gandhi*** applied specifically to tribunals that replaced traditional courts (such as the NCLT), whereas the CCI is a specialized, multi-disciplinary regulatory body comprised of experts in economics, commerce, law, and public affairs. The correctness of the Delhi High Court's judgment in ***Mahindra Electric Mobility (supra)*** is pending consideration before the Supreme Court, and in the absence of any stay or declaration of invalidity of the statute, the ongoing proceedings of the Commission are fully protected and valid.

SUBMISSIONS OF THE STATE OF M.P.(RESPONDENT NO.4):

28. Learned Counsel appearing for the State of Madhya Pradesh (Excise Department) submitted that under the constitutional scheme of List II, Entry 8, the State possesses the absolute and exclusive prerogative to regulate every facet of country liquor manufacturing, supply and sale. The country liquor is strictly monitored to protect public health, prevent the circulation of spurious and illicit liquor and safeguard vital state revenues.

29. The learned counsel for State also submitted that the tender conditions, eligible participant criteria, distillation ceilings and supply allocations are finalized and approved directly by the State Cabinet of Ministers. The tender requires successful bidders to guarantee 1.5 times the estimated supply of the district to maintain continuous availability. He supported the petitioners' contention that the price band is strictly compressed between the base price and the maximum selling price, leaving a

marginal profit of 10% to 15% for wholesale suppliers.

30. The State Government submitted that its excise policy was formulated to balance multiple socio-economic objectives, including the promotion of local industrial investment and the protection of excise duty collections. Counsel submitted that to preserve federal balance and avoid jurisdictional conflicts, respondent No. 2 (CCI) should have respected the constitutional mandate of the State and refrained from intervening in the tender process without first consulting or seeking a reference from the State Government under Sections 21 and 21A of the Competition Act.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONERS:

31. Learned senior counsel for the petitioners, in rejoinder, submitted that the respondent's reliance on ***Coal India Ltd. (supra)*** is completely misplaced. The petitioners are not claiming sovereign immunity under Section 2(h) of the Act. The petitioners' primary challenge is to the absolute lack of jurisdiction of the CCI over a subject matter that is constitutionally isolated under List II, Entry 8, and governed by an administered pricing framework under a complete state code.

32. Learned counsel also contended that the legality of the order under Section 26(1) of 2002 Act must be tested on the basis of the reasons and material available to the Commission on 04.08.2020 (***Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405***). The subsequent discovery of emails or WhatsApp chats by the Director General during search operations cannot retrospectively cure an initiation order that was

founded solely on an un-tabled, constitutionally inadmissible CAG report. If the initial assumption of jurisdiction was void, all consequential proceedings, including the DG report, are non-est.

33. Learned counsel reiterated that offering a 'Confidentiality Ring', is not the remedy for the illegality committed by the Director General. Under Regulation 35, the Director General has no statutory authority to grant confidentiality *suo motu* when the parties themselves had expressly stated in paragraph 5.10 that they claimed no confidentiality. By denying access to unredacted materials while demanding replies to show-cause notices under Section 26(8), the respondent No. 2 has subjected the petitioners to an impermissible and one-sided inquiry in violation of the basic tenets of natural justice.

Appreciations and conclusion

34 We have heard learned counsel for the parties. The first contention raised by Shri Mathur, learned senior counsel for the petitioner is that Entries 8 & 51 of the List-II (State List) of Seventh Schedule of the Constitution give exclusive powers to the Legislature in the matter of intoxicating liquor, production, manufacture, possession, transport, purchase and sale. The Parliament lacks the legislative competence to control the fields of aforesaid subject. Hence, the statutory authority created under the Act of Parliament i.e. Competition Commission of India (CCI) cannot directly encroach upon the exclusive State exercise frame work. It is further submitted that M.P. Excise Act, 1915, M.P. Distillries Rules and M.P. Country Spirit Rules strictly regulate through Excise Department of the State

of Madhya Pradesh in the matter of manufacturing, production, transportation and sale of all liquor product. The State Excise Department prefixes the base rate as well as the maximum sale price leaving narrow margin between one to five rupees and the selection of L-I and the financial allocations are subject to approval by the State Cabinet. Hence, there is no scope and jurisdiction for CCI to supersede the local authority. The M.P. Excise Act 1915 consolidate the laws relating to import, export, transportation, manufacturing, sale and possession of intoxicating liquor and drugs. There is no fundamental right of the citizen to carry on trade or to do business in liquor as the State enforces public morality to prohibit trade in noxious trade or dangerous goods. There is power of State to enforce and absolute prohibition over manufacture or sale of intoxicating liquor. The State has exclusive right of privilege of manufacture or sale of the liquor under the public morality, public interest and harmful & dangerous character of the liquor. The State possesses the right to complete control over all the aspects of intoxication, namely, manufacturing, sale and consumption of liquor. Since the State has exclusive right or privilege of manufacturing or sale of liquor, therefore, the State grants such right or privilege in the shape of licence or a lease, by way of holding the public auction to a private individual. Therefore, M.P. Excise Act and the Rules made thereunder only control the manufacturing and selling of right of the State Government through the grant of licences to private person. The State has a power to declare what shall be deemed to be a country liquor or foreign liquor and also to decide the area as regards to retail sale of liquor under the licence.

The State also possesses the power to appoint officers as the Excise Commissioner to enjoy the superintendence and administration of the Excise Department and collection of excise revenue. The State also possesses the power to prohibit throughout the State or the specified area by way of notification for import or export of any intoxication. Chapter-IV of Excise Act deals with manufacturing, possession and sale of intoxicant. Section 13 deals with the licence required for manufacturer. Section 14 thereof provides for establishment of license of distilleries and warehouses. Section 16 stipulates that possession of intoxicant and section 17 imposition the terms and conditions of the licence for sale of intoxicant.

35 So, therefore, there is exclusive control of the State Government over the licence, manufacturing, sale of intoxicant, cancellation, suspension, penalty by way of M.P. Excise Act and the Rules made thereunder. Therefore, the issue is whether the Competition Act, 2002 ("2002 Act") is encroaching upon the area of the State Government in the matter of excise in respect of manufacturing and sale of intoxicant. A High Level Committee on Competition Policy and Law was constituted by the Central Government to reconsider "The Monopolies and Restrictive Trade Practices Act, 1969". The Committee submitted its report on 22.5.2000. Thereafter, Competition Bill, 2001 was moved to ensure fair competition in India by prohibiting trade practices which causes appreciable adverse effect on competition in markets within the India and for this purpose provides for the establishment of a quasi-judicial body to be called the Competition Commission of India (for short the "CCI") which shall also undertake and aims at curbing negative

aspects of competition. The CCI through its Principal and Additional Benches look into the violations of the Act, based on its own knowledge or information or complaints received and the references made by the Central Government, State Government or the statutory authorities. The Commission has been given powers to pass an interim orders or any other appropriate interim relief and compensation or the penalty and to rule out the adverse effect on the competition and to promote and sustain the competition in markets, in order to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India. The Competition Bill was passed in both the Houses of Parliament and received the assent of the President on 13.1.2003 and came on the statute Book in the name as "The Competition Act, 2002" [12 of 2003].

36. The Chapter-II of the Competition Act deals with prohibition of certain agreements, abuse of dominant position and regulation of combinations, under which no enterprises or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within the India. As per definition of term "goods" as provided under section 2(i) the goods means as defined in the Sale of Goods Act, 1930 and includes products manufactured, processed or mined; debentures, stocks and shares after allotment; in relation to goods supplied, distributed or controlled in India and goods imported into India. As per section 2(u) of the 2002 Act the term "service" means service of any

description which is made available to the potential users and includes the provision of service in connection with business of an industry or commercial matters. Likewise, section 2(x) thereof defines term "trade" which means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provisions of any service. Section 4 of the 2002 Act provides for controlling the abuse of dominant position of any enterprise or group, directly or indirectly in the matter of purchase or sale of goods or services, price, production etc.

37. Chapter-III of the Act deals with establishment of "Competition Commission of India" (CCI) by way of a notification for the purpose of the Act of 2002. Sections 8, 9, 10, 11, 12, 13, 14 & 15 of 2002 Act deal with appointment, selection of the Committee for chairperson and members of Commission, service conditions and salaries. Section 16 thereof deals with appointment of Director General, Additional, Joint, Deputy or Assistant Director General for the purposes of assisting the Commission in conducting inquiry into a contravention of any of the provisions of the Act and for performing such other functions as are, or may be, provided by or under the Act. The duties, powers and functions of the Commission are given in Chapter-IV of the Act in relation to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interest of consumers and in order to ensure freedom of trade carried on by other participants in markets in India. Therefore, the fields on which the Excise Department, and the aims & object of Excise Act are altogether different

from the aims & object of enacting Competition Act, 2002. None of the Acts are interfering in the respective fields created under the enactments. The Competition Act nowhere provides to take control on issuance of licence, manufacture, sale Policy framed by the State Government in the matter of intoxicant. The CCI is established only to examine and eliminate practices having adverse effect on competition and promote and sustain competition, protect interest of consumers and ensure freedom of trade and to act as a quasi judicial authority.

38 Therefore, the contention of Shri Mathur, learned senior counsel is that Central Legislation (Competition Act, 2002) is interfering with the subject matter of liquor by virtue of Item 8 & 15 of Seventh Schedule of the Constitution. The jurisdiction vested in the State Government is not trumped by CCI exercising the power under the Act of 2002 enacted by the Union of India under the residuary vested in the Union under Entry 97 of List-I of the Seventh Schedule of the Constitution. There is absolutely no conflict between 2002 Act and MP Excise Act. The CCI is not exercising any parallel or concurrent jurisdiction in the matter of distilleries, manufacture, sale of country as well as foreign liquor.

39. Shri Mathur, learned senior counsel, has placed heavy reliance on the decision of the Apex Court in the case of CCI Vs. Bharti Airtel Limited (supra). In this case, the issue was whether the CCI had jurisdiction in view of the TRI Act, 1997 and the authorities and regulations made thereunder. The Apex Court has held that the CCI is specifically entrusted with duties and functions to deal with anti-competitive practices, and to

eliminate such practices that have an adverse effect on competition, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in India. In the state of Madhya Pradesh under the Excise Act and Rules made thereunder, no such regulatory body like TRAI has been constituted to examine such practices having an adverse effect on competition and protection of consumers. The state authorities established under the Excise Act have only the power to issue licenses for manufacturing and sale of intoxicants. The State Government frames the policy for grant of license, but there is no independent authority to examine the adverse effect on competition and the protection of consumer interest. Therefore, the CCI established under the central statute operate in a different fields and having different purpose. Hence, it cannot be said that there is an implied repeal of the powers and authority given under the Madhya Pradesh Excise Act by the Competition Act, which is a special statute to deal with anti-competition matters alone. It is an exclusive domain of the CCI to find out whether the particular agreement will have an appreciable adverse effect on competition within the relevant market in India. For this purpose, the CCI is to take into consideration the provisions in the Competition Act. The CCI is experienced in conducting competition analysis under the Competition Act. The Apex Court has not completely ousted the jurisdiction of interference of the CCI even in the matter of the telecom sector and held that once the exercise is done and there are findings recorded by the TRAI, which lead to a prima facie conclusion that IDOS have indulged in anti-competitive practice, the CCI can be activated to investigate the matter going by the criteria laid down in the relevant provision of the Competition Act. In the MP Excise Act and the rules made their under, there is no such authority or provision to examine the issues related to anti-competition practice within the license folder.

40. The next contention of Shri Mathur, learned senior counsel is that on the basis of Comptroller & Auditor General report No.-I the CCI can initiate *suo motu* proceedings against the petitioner under section 26(1) of the 2002 Act directing the Director General to investigate the matter. Shri Mathur submitted that CCI can direct the Director General to do investigation only on receiving references from the Central Government or the State Government or the statutory authority or on its own knowledge or information received under section 19 of this Act. In this case, the CCI took up the matter *suo motu* on the basis of CAG report. Section 19(i) says that the Commission may enquire any alleged contravention on its own motion or in receiving any information in such manner accompanied by such fee as may be determined from any person or consumer or trade association or by a reference made to it by the Central Government or the State Government or the statutory authority. The CAG report cannot be the basis of information under which Commission may initiate enquiry under Article 151 of the Constitution of India. The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament. The reports of the CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the State Legislature. Therefore, unless the report given by the CAG is submitted to

the Governor and placed before the Legislature it cannot relied upon by the CCI for the purpose of initiation of enquiry under sections 19 and 26 of the Act. In support of his submission, Shri Mathur, leaned senior counsel has placed reliance on the decision of Supreme Court in the case of ***Arun Kumar Agrawal Vs. Union of India and others*** (2013) 7 SCC 1, it has been held that CAG report is always subject to scrutiny by Parliamentary debates and PAC can accept Ministry concerned's objection to CAG report or reject CAG report. The CAG is an independent constitutional functionary. However, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report. In this case the Supreme Court has also held that report of CAG is from a constitutional authority. It commands respect and cannot be brushed aside, as such. In the present case, the CCI has not accepted the report of CAG as it is, but directed the Director to conduct an enquiry. Therefore, this judgment is of no help to the petitioner, as on today the CCI has passed an order under section 26(1) of the Act directing the Director General to conduct enquiry in the matter within its power under sections 19 & 26 of the Act. As on today, the CAG report has been taken as received information for the purpose of enquiry into alleged contravention of the provisions of the Act.

41. In the matter of ***Bharti Airtel (supra)*** the jurisdiction of CCI is explained in paragraph 79 onwards. The Apex Court has examined the power of TRAI in the field of telecom infrastructure, production, consumers interest *vis a vis* the jurisdiction of CCI to deal with the complaint/information filed before it. In paragraph 106 the Apex Court

examined the issue whether the TRAI has exclusive jurisdiction to involve anti competition practice to the exclusion of jurisdiction of CCI. Finally, in paragraph 112 the Apex Court held that it is only the CCI which is empowered to deal with anti competition from the laws of the Competition Act. If such activity offends that Act, then consequences of that Act would also follow. The CCI is an expert body in collecting the competition analysis. The specified and important role assigned to CCI cannot be completely washed away the difference between the regulatory sector i.e. TRAI and market regulators i.e. CCI, and same has to be maintained. Paragraphs 111 & 112 of the aforesaid decision of the Apex Court are reproduced below:-

> *"111. Moreover, it is within the exclusive domain of CCI to find out as to whether a particular agreement will have appreciable adverse effect on competition within the relevant market in India. For this purpose, CCI is to take into consideration the provisions contained in the Competition Act, including Section 29 thereof. Sections 45 and 46 also authorise CCI to impose penalties in certain situations.*
>
> *112. Obviously, all the aforesaid functions not only come within the domain of CCI, TRAI is not at all equipped to deal with the same. Even if TRAI also returns a finding that a particular activity was anti-competitive, its powers would be limited to the action that can be taken under the TRAI Act alone. It is only CCI which is empowered to deal with the same anti-competitive act from the lens of the Competition Act. If such activities offend the provisions of the Competition Act as well, the consequences under that Act would also follow. Therefore, contention of the IDOs that the jurisdiction of CCI stands totally ousted cannot be accepted. Insofar as the nuanced exercise from the standpoint of the Competition Act is concerned, CCI is the experienced body in conducting competition analysis. Further, CCI is more likely to opt for structural remedies which would lead the sector to evolve a point where sufficient new entry is induced thereby*

promoting genuine competition. This specific and important role assigned to CCI cannot be completely wished away and the "comity" between the sectoral regulator (i.e. TRAI) and the market regulator (i.e. CCI) is to be maintained."

42. Finally, in paragraph 121 of the aforesaid Apex Court decision it has been held that order passed under section 26(1) of the Competition Act is administrative in nature and that is further directive directing the Director General to make enquiry. The High Court would not adjudge the validity of such order on merit. Finally, the Apex Court held that giving findings on merit would not be proper. The aforesaid judgement will be of no help to the petitioner since as on today the CCI has only passed an order under section 26(1) of the Act directing the Director General to conduct an inquiry into the matter.

43. Relying on the decision in the case of ***State of U.P. Vs. M/s Lalta Prasad Vaish and Sons***, 2024 (17) SCC 1 it has been argued by Shri Mathur, learned senior counsel that Parliament cannot take under its control the subject pertaining to intoxicating liquor under any Law such as IDRA made under Entry 52 of List-I. Therefore, the subject intoxicating liquor falls exclusively within the domain of State Legislature which also has obligation to prevent industrial alcohol being covered into intoxicating liquour as an abuse.

44. Learned counsel for CCI has placed reliance on the judgment of Apex Court in the case of ***Rajasthan Cylinders and Containers Limited Vs. Union of India***, (2018) SCC Online SC 1718 and referred to the observation wherein it has been held that section 18 of the Act casts a specific and

positive obligation on CCI to eliminate anti competition area, practice and promote competition and protect the interest of consumer and to ensure free trade. There is presumption that four types of agreements in sub-section (3) of section 19 will have appreciable adverse effect on competition. Section 19(3) of the Act mentions the factor which is to be examining for determining whether any agreement has an appreciable adverse effect on competition under section 3. No further exercise is needed by the CCI once a finding is arrived at that a particular agreement fell into any of the aforesaid four categories.

45. In the case of ***CCI Vs. SAIL and another***, (2010) 10 SCC 744 the Apex Court observed in paragraphs 97, 98 & 113 as under:-

> *"97. The above reasoning and the principles enunciated, which are consistent with the settled canons of law, we would adopt even in this case. In the backdrop of these determinants, we may refer to the provisions of the Act. Section 26, under its different sub-sections, requires the Commission to issue various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. Even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning. At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express*

its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General. Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act, as aforereferred. However, other decisions and orders, which are not directions simpliciter and determining the rights of the parties, should be well reasoned analysing and deciding the rival contentions raised before the Commission by the parties. In other words, the Commission is expected to express prima d facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned. C

98. Such an approach can also be justified with reference to Regulation 20(4), which requires the Director General to record, in his report, findings on each of the allegations made by a party in the intimation or reference submitted to the Commission and sent for investigation to the Director General, as the case may be, together with all evidence and documents collected during investigation. The inevitable *consequence is that the Commission is similarly expected to write appropriate reasons on every issue while passing an order under Sections 26 to 28 of the Act.*

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113. This Court in Brahm Dutt v. Union of India 43, while considering the constitutional validity of Section 8 of the Act observed that the Commission is an expert body which had been created in consonance with international practice. The Court observed that it might be appropriate if two bodies are created for performing two kinds of functions, one advisory and regulatory, and the other adjudicatory. Though the Tribunal has been constituted by the Competition (Amendment) Act, 2007, the Commission continues to perform both the functions stated by this Court in that case. Cumulative effect of the above reasoning is that the Commission would be a necessary and/or a proper party in the proceedings before the Tribunal."

46. The petitioner has approached this Court in order to seek quashing and setting aside order of Commission dated 04.8.2020 passed under section 26(1) of the 2002 Act, by which, the Director General was directed to conduct investigation. Thereafter, the Commission considered the investigation report submitted on 21.7.2023 and directed for supply to opposite parties in order to submit objection/suggestions. The petitioners waited till submission of final report by the Director General. The petitioners

ought to have approached this Court immediately after passing of the order dated 04.8.2020. When the report of the Commission came against them, and when CCI started proceeding against the petitioners/OPs and calling upon them to submit an objection, then the petitioners approached this Court by way of these writ petitions. The petitioners continued to participate on 21.9.2023, 15.11.2023 & 03.1.2024, and finally on 21.3.2024. Some of the OPs/petitioners filed interlocutory applications which were for extension of time, cross-examination of five individuals, supply of oral statements, etc. Therefore, in mid of the proceedings the petitioners have approached this Court for challenging the authority of CCI which has yet to pass final order under section 27 of the 2002 Act. Even if any order is adverse and against the petitioners, then they shall have a remedy under section 53A before the National Company Law Appellate Tribunal constituted under section 410 of the Companies Act. The orders passed under sub-section (2) of section 26 and section 27 are appealable. Therefore, despite availabilty of statutory and efficacious remedy the petitioners have approached this Court by way of writ petition and got the proceedings stayed.

47. In view of above, all the writ petition stand dismissed. Interim order passed is vacated. The CCI is directed to complete the enquiry under section 26 of 2002 Act and pass final order under section 27 thereof.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

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