



IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT APPEAL No. 683 of 2024

MOUNT EVEREST BREWERIES LIMITED

Versus

MP BEER PRODUCTS LIMITED

Appearance:

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

*Shri Sumit Nema, Senior Advocate with Shri Piyush Parashar -
Advocate for respondent no.1/Caveator.*

Shri Sudeep Bhargava – Advocate for respondent nos.2, 3 &4.

WITH

WRIT APPEAL No. 1288 of 2024

MOUNT EVEREST BREWERIES LIMITED

Versus

REGENT BEERS & WINES LIMITED



Appearance:

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

Shri Veer Kumar Jain, Senior Advocate with Shri Namit Jain - Advocate for respondent no.1.

Shri Sudeep Bhargava – Advocate for respondent no.4.

AND

WRIT APPEAL No. 1289 of 2024

MOUNT EVEREST BREWERIES LIMITED

Versus

SOM DISTILLERIES AND BREWERIES LIMITED

Appearance:

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

Shri Sumit Nema, Senior Advocate with Shri Piyush Parashar - Advocate for respondent no.1/Caveator.

Shri Sudeep Bhargava – Advocate for respondent nos.2, 3 &4.

Reserved on : 06.08.2024

Pronounced on : 12.11.2024

ORDER

Per: Justice Sanjeev Sachdeva



1. Appellant (M/s Mount Everest Breweries Limited) in all the appeals, impugns order dated 13.03.2024, whereby the Writ Petitions filed by the Appellant have been disposed of, by once again remitting the matter to the Commissioner of Excise to decide the dispute afresh.

2. Appellant is *inter alia* a manufacturer and seller of Beer *inter alia* under the trademark “STOK”. Appellant sells its beer also in glass bottles. The glass bottles used by the Appellant for selling its beer, apart from being affixed with a label and stickers bearing the statutory details and Appellant’s trademark “STOK” is embossed with the trademark “STOK” and a “panda device”.

3. As per the appellant, it was noticed that the private Respondents in the respective appeals, who also manufacture and sell beer were reusing the beer bottles of the Appellant for marketing their beer. As per the Appellant, the beer bottles were reused containing the embossed trademark “STOK” and the “Panda device” of the appellant thereby infringing its trademark and passing off its beer as that of the Appellants.

4. Appellant approached the Commissioner of Excise Madhya Pradesh on 10.12.2019 and 05.03.2020, complaining about the reusing of the beer bottles manufactured by them and bearing their trademark/copyright/design.

5. No action was taken by the Commissioner of Excise on the representations of the Appellant. Appellant, thereafter, approached



this Court in Writ Petition No. 7051 of 2020. By order dated 10.07.2020, the Writ Petition was disposed of directing the Commissioner of Excise to take an appropriate decision on the representations of the Appellant dated 10.12.2019 and 05.03.2020.

6. By order dated 07.11.2020, the Commissioner of Excise decided the representation of the Appellant and prohibited all liquor/beer bottling units, including the private Respondents, from using old glass bottles which carry an embossment on them, for the purposes of refilling and sale of liquor and also prohibited the reuse of the old bottles even after removing or scratching the embossed logo.

7. The Private Respondents filed the respective Writ Petitions impugning the order dated 07.11.2020 of the Commissioner of Excise. The contention of the Private Respondents (Writ Petitioners) was that the Commissioner of Excise was directed by the High Court to decide the representations by a reasoned and cogent order. However the Commissioner of Excise has not discussed the legal propositions and has prohibited the use of such bottles. It was submitted that the order is non reasoned and cryptic.

8. Learned Single Judge by the impugned order dated 13.03.2024, held that the Commissioner of Excise had not adverted to any of the objections raised by the Respondent (Writ petitioners) and the order was cryptic in nature and bereft of reasoning and accordingly quashed the same and remitted the matter to the Commissioner of Excise to decide the dispute afresh.



9. Learned senior counsel appearing for the Appellant contends that the Commissioner of Excise was within its right to ensure proper conduct of business by the various beer manufacturers. It is contended that the reuse of beer bottles violated the Excise Act and the rules and also violated the *Madhya Pradesh Beer and Wine Rules, 2000* (hereinafter referred to as the *MP Beer and Wine Rules*).

10. It is submitted that the Private Respondents had indulged in the malpractice of using the empty beer bottles of other manufacturers by putting their own label on the said beer bottles. It is contended that the Bottles of the Appellant have the trademark of the Appellants embossed on the bottles and even if the label of the Appellants was removed, the embossed trademark remained and as such the reused bottle clearly infringed the Intellectual Property Rights of the Appellants and also contravened the approved label of the Private Respondents under the Excise Act.

11. It is contended that similar malpractice was adopted by the Private Respondents across the country and whenever it is brought to the notice of the authorities, they undertake to stop such practise. It is further contended that the Private Respondents even attempt to scratch out the logo of the Appellant thereby weakening the strength of the bottles and cause risk to the consumers.

12. Per contra, learned senior counsel for the Private Respondents contended that the private Respondents manufacture and sell beer



under its own brands and labels, which have been duly approved by the Commissioner of Excise.

13. It is submitted that it is a long established common industrial practice of using empty beer bottles for bottling beer and labelling them with approved labels for the past many years. It is submitted that empty bottles are procured from the scrap dealers (*Kabadis*) and then used for bottling own manufactured beer. Existing labels are removed and the approved labels are affixed on the bottles before releasing them in the market. As per the private Respondents, they affix big sized labels on the beer bottles so that it does not even confuse the ultimate end-consumer.

14. It is further contended that the Commissioner of Excise has no jurisdiction to direct the Private Respondents (Writ Petitioners) to comply with the provisions of *Trademarks Act, 1999*, *Copyrights Act, 1975* and *Designs Act, 2000*. It is contended that the *Excise Act* is confined to the payment of excise revenue and its regulations does not deal with infringement of any intellectual property right. It is further submitted that nowhere in the *Excise Act* or the Rules framed there under, there is any prohibition that the beer bottle of any other manufacturer cannot be used by any other company. It is submitted that if there is any infringement under the *Trademarks Act*, proper course available to a party is to file a suit for infringement. It is contended that the *MP Beer and Wine Rules* also do not prohibit such a practice.



15. It is contended that none of the objections raised by the Private Respondents were considered by the Commissioner of Excise and the order passed being cryptic has rightly been set aside and matter remitted to be decided afresh.

16. It may be noted that objections raised by the Private Respondents in their representation to the Commissioner of Excise, which as per the Private Respondents have not been decided are as under:

- (i) *Private Respondents are law-abiding licensee bottling units selling goods under labels approved from excise department and following common industrial practices;*
- (ii) *Lack of executive or legislative sanction in passing the order in question;*
- (iii) *Violation of article 19(1)(g) and article 301 of the Constitution of India;*
- (iv) *Logistical impossibility and financial hardship to be caused due to implementation of the order dated 07.11.2020; and*
- (v) *Danger to Environmental protection and sustainability.*

17. Learned single judge has noted that the impugned order was cryptic and does not deal with the contentions raised and has remitted the matter for reconsideration. However, keeping in view the fact the controversy is very narrow and there are no disputed questions of facts, we heard learned counsels for the parties on merits of the



respective contentions.

18. It is not in dispute that the Private Respondents sell their beer by bottling them in reused beer bottles. The contention of the Private Respondents is that they buy the bottles in bulk from scrap dealers and then remove the original labels affixed on the bottles and then affix their approved labels. It was candidly admitted that if any bottle is found with an embossing of a trademark, the embossing is scratched out before reusing the bottle.

19. For the purposes of better appreciating the controversy between the parties, it would be appropriate to view a pictorial representation of the bottles and the embossed logo on the Bottles of the Appellants and the reused bottles by the Private Respondents.

20. The Bottles that are manufactured and used by the Appellant for bottling its beer depicting the registered trademark and logo are as under:

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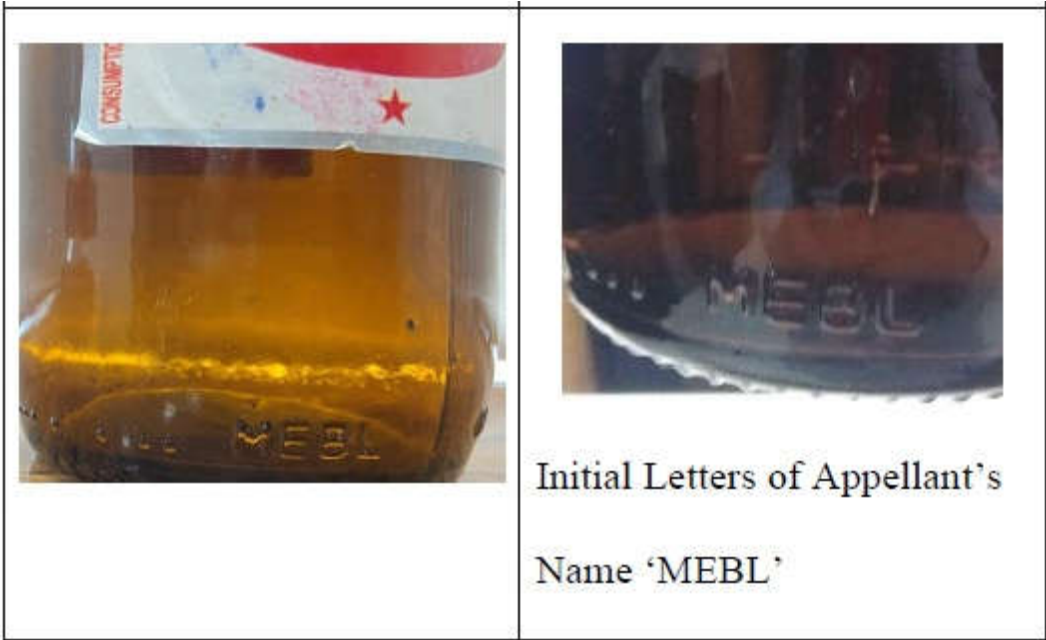
Registered Trademark

'STOK'



Artistic Feature of STOK

PANDA FACE



21. On the other hand some of the bottles that are reused by the Private Respondents and other beer manufactures, who claim to affix their own labels are as under:





22. As per the private Respondents, in some cases, they are



scratching out the embossed labels before reusing the bottles.
Depiction of the scratched out bottle is as under:





23. The fact that the Private Respondents are scratching out the embossed logos and marks clearly demonstrates that they also acknowledge that use of bottles with embossed logo and trademark would infringe the Intellectual Property rights of other manufacturers.

24. Rule 12 of the *MP Beer and Wine Rules* pertaining to Registration of Labels stipulates that the provisions of the *Madhya Pradesh Foreign Liquor Rules, 1996*(hereinafter referred to as the *MP Foreign Liquor Rules*) shall apply mutatis mutandis to registration or de-registration of labels of beer or wine.

25. Condition No. (6) of Form B-3 issued under Rules 4(3) i.e. the *License* issued under the *MP Beer and Wine Rules* mandates that the *licensee shall use only such labels on bottles/containers as are registered with the Commissioner of Excise.*

26. Rule 7(4) of the *MP Foreign Liquor Rules* mandates that “*the licensee shall paste a label registered with the Commissioner of*



Excise, displaying all the particulars enumerated in sub-rule (1) of rule 9, to every bottle after filling it with foreign liquor.

27. Rule 9 of the *MP Foreign Liquor Rules* reads as under:

“9. Registration of labels.

(1) No foreign liquor shall be transported within, imported into, exported from and sold within Madhya Pradesh, unless the following legends and details are printed on the labels pasted to the bottles of foreign liquor :-

- (a) “Consumption of liquor is injurious to health”.*
- (b) “For sale in Madhya Pradesh only” or “Duty not paid in Madhya Pradesh” as the case may be.*
- (c) Batch No., Month and year of manufacture.*
- (d) Name and place of distillery, manufactory or bottlery.*
- (e) Alcoholic contents and proof strength.*
- (f) Brand with contents.*
- (g) Registration No. of the brand/label.*
- (h) Minimum selling price as directed by the Commissioner of Excise.*

(2) Only such bottles or cans of foreign liquor, with labels showing legends/details as specified in sub-rule (1) duly registered with the Commissioner of Excise in accordance with sub-rules (3) and (4) may be sold in, transported within, imported into, or exported from Madhya Pradesh :

Provided that the labels manufactured by any bottling licensee of Madhya Pradesh that have been approved by the Commissioner of Excise before the commencement of these



rules, shall be deemed to have been duly registered under sub-rules (3) and (4) :

Provided further that the labels registered for each manufactory or the labels approved by the Commissioner of Excise before the commencement of these rules, which shall be deemed to have been duly registered under sub-rules (3) and (4) shall be compulsorily renewed every year. Annual renewal fees for each label/labels shall be such as may be prescribed by the Government. No label/labels shall be used by any manufacturer unless it has been duly registered or renewed. If any label/labels are cancelled by the Commissioner of Excise under rules (6) on the ground that such label/labels has caused or are causing losses to state revenue, then owner of such label/labels shall not be entitled for registration of any new label for a period of one year beginning with the date of cancellation of that label/labels.

(3) Licensee shall make an application to the Commissioner of Excise for registration/renewal of label/labels alongwith the fee as prescribed for each kind of label. Three printed copies of the label to be registered and a challan in proof of payment of the prescribed registration fee, deposited in the treasury of the district shall be enclosed alongwith the application. The format of the label shall contain the details mentioned in sub-rule (1). An application for renewal of label/labels shall be filed alongwith the challan of prescribed fee before the end of current year mentioning details of prior registration and renewal.

(4) On receipt of application for Registration of label/labels, the Commissioner of Excise, may make such enquiry as he deems proper, if he is satisfied that the pre-requisites specified in sub-rule (3) have been complied with and there is no objection to such registration, he may register it. No such label/ labels shall be registered which bears similarity or resemblance to any prevalent label of any other manufactory.

(5) A label as aforesaid in sub-rule (1) shall not have any figure, symbol, picture, insignia, etc. that looks obscence or



that may offend the religious feelings of any particular class or hurts the sentiments or pride of any group, community or institution. In case of a dispute whether a label is obscene, offensive or hurtful, the matter shall be referred to the Commissioner of Excise and his decision thereon shall be final and binding.

(6) The Commissioner of Excise may order cancellation of registration of a label made under sub-rule (4), if liquor sold under any such registered label is found sub-standard or if he is convinced that the sales under that label are causing financial losses to the State Government or if he is satisfied that the label is obscene, outrageous or hurtful. He shall, however, before passing such an order, given the affected licensee an opportunity to make a representation against such proposed cancellation. Consequent upon such cancellation, the Commissioner of Excise may also pass suitable order regarding disposal of the stocks of the cancelled label held by any licensee and the State Government shall not be liable to pay any compensation to the licensee for any loss or damage. The procedure regarding the disposal of stocks and for any loss or damage to the licensee in consequence of non-renewal of labels, shall be the same as is applicable after cancellation of the label/labels.

28. Rule 10 (1) (b) of the *MP Foreign Liquor Rules* mandates that Import of only those labels of foreign liquor shall be permitted which are registered with the Commissioner of Excise under Rule 9.

29. One of the standard conditions of the Manufacturer's Distribution Licence Form FL 10 is that *only those labels or brands of foreign liquor shall be procured, stocked and sold that have been manufactured or bottled by the manufacturer or bottler mentioned in Schedule-II.*



30. Further, Rule 4 of the *MP Foreign Liquor Rules* mandates as under:

“4. Manufacture and bottling of foreign liquor under franchise arrangement.

- A licensee, who holds a licence in Form FL 9-A, shall before he begins manufacturing and bottling of any brand of foreign liquor under a franchise agreement with original manufacturer or owner of such brand outside Madhya Pradesh, furnish a copy of such franchise agreement with the original manufacturer or owner, alongwith all relevant details. Similarly, if a franchise agreement made with the original manufacturer or owner of a brand is validly terminated by the franchiser or the franchisee, the franchisee shall forthwith report the fact of such termination to the Commissioner of Excise and stop manufacture of the brand concerned under the franchise agreement.

31. Rules 8 of the *MP Foreign Liquor Rules* that lists out the various categories of licences includes *FL 9A (Special Bottling Licence)* and stipulates that *“the licence may be granted to such licensee who has been franchised (authorised/ conferred franchise) for bottling specified labels or brands of foreign liquor/Beer by the owner of such labels or brands when foreign liquor/Beer of such labels or brands was or is already being manufactured anywhere outside Madhya Pradesh at the time of or before franchising of the concerned F.L. 9/B-1A licensee by the owner of the labels or brands. The Licence shall also be required to be taken by an F.L. 9/B-1A licensee, who wants to manufacture or manufactures foreign liquor/Beer of any labels or brands belonging or owned by the F.L. 9/B-1-A licensee himself if foreign liquor/Beer of such labels or*



brands was or is already being manufactured anywhere outside Madhya Pradesh.” (underlining supplied)

32. Pasting of Label on the bottle is not just for mentioning the statutory details like strength etc. but also for the purpose of identifying the manufacturer. How a person identifies a manufacturer is through the label and brand. Brand is a trademark which is capable of distinguishing the goods and services of one person from those of others.

33. “*Trademark*” is defined by the *Trademarks Act, 1999* as under:

“2. (zb) “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and— (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;”

34. *Mark* is further defined by the *Trademarks Act, 1999* as “(m) *“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or*



combination of colours or any combination thereof;

35. There is a special significance attached to the label and brand of foreign liquor/beer. Manufacturers, distributors and retailers have to maintain complete accounts and details of receipts, sales and stock etc. label wise and brand wise. No foreign liquor/beer can be transported, imported, exported or sold unless *inter alia* the details required by Rule 9 of the *MP Foreign Liquor Rules* are printed on the label. Rules mandate mentioning on the label *inter alia* the name and place of distillery, manufactory or bottlery; Brand with contents and Registration No. of the brand/label. Repeatedly references have been made in the rules, licenses, forms and the schedules under the rules to “*brand/label*”. Thus clearly emphasising the significance of the *brand/label* of the manufacturer.

36. Registration of the label is mandatory before any transportation, import, export or sale of foreign liquor/beer can be done. The label mandatorily contains the brand. Presence of two different brands on a bottle would not only be in contravention of the *MP Foreign Liquor Rules* but would also be deceptive.

37. In the instant case, it is not in dispute that the Private Respondents are reusing the bottles of the Appellants. As seen from the pictorial depiction, hereinabove, the bottles manufactured by the Appellants, have their brand i.e. trademark and logo “STOK” and the “*Panda device*” embossed on the bottles. There is no dispute that the brand “STOK” and the “*Panda device*” are the trademarks of the



Appellants. Private Respondents are not claiming any right to the said marks.

38. Private Respondents are merely pasting their registered label on the bottles. The brand of the Appellants “STOK” and the “*Panda device*” continue to remain prominently visible on the bottles. Such bottles contain not one but two brands, which clearly contravenes the *MP Foreign Liquor Rules* and cannot be permitted.

39. As noticed above, private Respondents have raised five grounds (i) that they are selling goods under labels approved from excise department and following common industrial practices; (ii) there is lack of executive or legislative sanction behind the order passed by the Commissioner of Excise; (iii) Violation of article 19(1)(g) and article 301 of the Constitution of India; (iv) Logistical impossibility and financial hardship to be caused due to implementation of the order dated 07.11.2020; and (v) Danger to Environmental protection and sustainability.

40. There is no merit in either of the grounds raised by the Private Respondents. As noticed, hereinabove, even though, Private Respondents are pasting their own labels on the bottles manufactured by the Appellants, the brand of the Appellants “STOK” and the “*Panda device*” is clearly and prominently visible thereby contravening various provisions of the *MP Foreign Liquor Rules*.

41. Further, there is no merit in the contention that there is lack of



executive or legislative sanction behind the order passed by the Commissioner of Excise. The Commissioner of Excise has been empowered to approve a label. Rule 9(4) of the *MP Foreign Liquor Rules* stipulates that on receipt of an application for registration of label/labels, the Commissioner of Excise is empowered to make such enquiry as he deems proper. It mandates that no such label/ labels shall be registered which bears similarity or resemblance to any prevalent label of any other manufactory. The Commissioner of Excise has the power to approve a label and also deny approval of a label. Clearly, if an action of the manufacturer or retailer contravenes the conditions of an approved label, he can pass an order prohibiting the manufacturer or retailer from acting in a manner that contravenes the approved label.

42. There is also no violation of Article 19(1)(g) and Article 301 of the Constitution of India as alleged by the Respondent. There is no prohibition on the Private Respondents from conducting their business. Private Respondents contend that it is common industrial practise to reuse beer bottles. The Commissioner of Excise has not prohibited reuse of beer bottles, he has only directed that the bottles that have embossed logo or brand cannot be used. Article 19(1)(g) and Article 301 do not guarantee absolute freedom. They empower the state to impose reasonable restrictions on the said freedom. Order passed by the Commissioner of Excise clearly falls within the ambit of reasonable restriction.



43. Further, logistical impossibility and financial hardship as contended by the Private Respondents cannot be a ground to permit contravention of statutory provisions. Contention of the Private Respondents is that, it is not financially viable for them to manufacture beer bottles and as such they have adopted the method of reusing bottles of other manufactures. Private Respondents for the sake of making their venture financially viable cannot be permitted to contravene the mandatory provisions of the *MP Foreign Liquor Rules* or violate the intellectual property rights of the Appellants. Private Respondents are free to reuse generic beer bottles manufactured by third parties which do not violate the label, trademark/brand/logo of another entity.

44. Final contention raised is alleged danger to environment, environmental protection and sustainability. This contention is premised on the ground that reuse and recycling of glass is one of the ways of reducing pollution and waste. This contention is to be rejected for the asking. As noticed above, there is no prohibition on the Private Respondents reusing and recycling glass bottles. Restriction is only on contravening the provision of the *MP Foreign Liquor Rules* and reusing bottles containing the embossed logo of other manufactures. This contravention cannot be permitted and the respondents have been rightly restrained from doing so.

45. With regard to the scratching out of the embossed logo from the reused bottles is concerned, the contention of the Appellants is that,



such an action weakens the strength of the bottles and can be a safety hazard.

46. We may note that there is no material produced before us by either party to show that the scratching of the brand/logo/device weakens or does not weaken the strength of the bottle or is a safety hazard. Even otherwise, said issue is not within the purview of the *MP Foreign Liquor Rules* or the *Excise Act*. Said issue is left open to be decided in an appropriate forum, if so raised.

47. Further, contention of the Appellants, that the private Respondents are using the bottles for which there is a design registration in favour of the Appellants, is again an issue that is beyond the purview of the *MP Foreign Liquor Rules* and the *Excise Act*. It would be open to the Appellant to seek enforcement of its Intellectual Property Rights in appropriate proceeding before an appropriate forum.

48. In view of the above, the appeals are allowed and the impugned order dated 13.03.2024 passed by learned Single Judge remitting the matter to the Commissioner of Excise for deciding the dispute afresh is set aside. Order dated 07.11.2020 of the Commissioner of Excise prohibiting all liquor/beer bottling units, including the private Respondents, from using old glass bottles which carry an embossment on them, for the purposes of refilling and sale of liquor, is upheld. However, the direction prohibiting the reuse of the old bottles after removing or scratching the embossed logo is set aside and said issue is



left open to be decided by an appropriate authority in appropriate proceedings.

49. There shall be no orders as to costs.

(SANJEEV SACHDEVA)
JUDGE

(PRANAY VERMA)
JUDGE