IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 5590/2023 a/w CWP Nos. 5106, 5455 to 5461, 5591 to 5593, 5654, 5655, 5894, 5895, 5961, 6099, 6157, 6158,6190, 6191, 6245, 6248, 6278, 6286, 6287, 6314, 6722 to 6725, 7074, 8922/ 2023, 814,2243, 4245, 4247, 4401, 4524, 4903, 5656, 7048, 7065, 8131, 9609, 9616, 9617, 9444, 9645,10149/2024, 2423,3716/2025 and CWP No. 576/2026

Reserved on: 16.09.2026

Date of Decision: 29.09.2026

Uploaded on: 29.09.2026

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1. CWP No. 5590/2023

Pradeep Thakur .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

2. CWP No. 5106/2023

M/s B.K. Liquor and others .....Petitioners

Vs.

State of Himachal Pradesh and others .....Respondents

3. CWP No. 5455/2023

M/s Himalyan Associates .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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4. CWP No. 5456/2023

M/s Rajinder Singh .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

5. CWP No. 5457/2023

M/s Rajat Thakur .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

6. CWP No. 5458/2023

M/s Star Wine Traders .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

7. CWP No. 5459/2023

M/s Vivek Baldev & Company .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

8. CWP No. 5460/2023

M/s Rajat Kapoor .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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9. CWP No. 5461/2023

M/s Rahul Kapoor .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

10. CWP No. 5591/2023

Yashpal Sharma .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

11. CWP No. 5592/2023

Manoj Sharma .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

12. CWP No. 5593/2023

Shamsher Singh .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

13. CWP No. 5654/2023

Sh. Anant Ram Verma .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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14. CWP No. 5655/2023

M/s D.S. Flights .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

15. CWP No. 5894/2023

Bhupesh Kumar Janartha .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

16. CWP No. 5895/2023

Agara Devi .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

17. CWP No. 5961/2023

M/s A.V. Enterprises .....Petitioner.

Vs.

State of Himachal Pradesh and others .....Respondents

18. CWP No. 6099/2023

Gourav Mahajan .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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19. CWP No. 6157/2023

Hans Raj Mehta .....Petitioner.

Vs.

State of Himachal Pradesh and others .....Respondents

20. CWP No. 6158/2023

M/s Dhruv Singh .....Petitioner.

Vs.

State of Himachal Pradesh and others .....Respondents

21. CWP No. 6190/2023

M/s Lekh Ram & Company .....Petitioner.

Vs.

State of Himachal Pradesh and others .....Respondents

22. CWP No. 6191/2023

M/s S.S. Wine .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

23. CWP No. 6245/2023

Pradeep Barotra .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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24. CWP No. 6248/2023

M/s Mannat Enterprises .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

25. CWP No. 6278/2023

M/s Rakesh Kumar Chadha .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

26. CWP No. 6286/2023

M/s Gurmail Singh and others .....Petitioners

Vs.

State of Himachal Pradesh and others .....Respondents

27. CWP No. 6287/2023

M/s VRS Wine .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

28. CWP No. 6314/2023

M/s Bhavya Enterprises .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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29. CWP No. 6722/2023

Nirmal Singh .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

30. CWP No. 6723/2023

Jarnail Singh .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

31. CWP No. 6724/2023

Subhash .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

32. CWP No. 6725/2023

Bhupinder Kaur .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

33. CWP No. 7074/2023

M/s Nand Lal .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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34. CWP No. 8922/2023

M/s Rakesh Kumar Chadha .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

35. CWP No. 814/2024

M/s Manali Wine Traders .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

36. CWP No. 2243/2024

M/s Rajesh & Company .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

37. CWP No. 4245/2024

M/s Ashu Spirits .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

38. CWP No. 4247/2024

M/s Narender Kumar & Meera Thakur .....Petitioners

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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39. CWP No. 4401/2024

M/s Narender Kumar & Meera Thakur .....Petitioners

Vs.

State of Himachal Pradesh and others .....Respondents

40. CWP No. 4524/2024

Mrs. Charanjeet Kaur .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

41. CWP No. 4903/2024

M/s Rajesh and Company .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

42. CWP No. 5656/2024

M/s Solan Wines .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

43. CWP No. 7048/2024

M/s Alcoprime Distilleries Pvt. Ltd. .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

44. CWP No. 7065/2024

M/s Parvesh Kumar and Company .....Petitioner

High Court of H.P.

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Vs.

State of Himachal Pradesh and others .....Respondents

45. CWP No. 8131/2024

M/s Star Wine Traders .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

46. CWP No. 9609/2024

Hans Raj Mehta .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

47. CWP No.9616 /2024

Bhupinder Kaur .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

48. CWP No. 9617/2024

Jarnail Singh .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

49. CWP No. 9644/2024

M/s Nirmal Singh & others .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

High Court of H.P.

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50. CWP No. 9645/2024

M/s Lekh Ram and Company .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

51. CWP No. 10149/2024

Agara Devi .....Petitioner

Vs.

State of Himachal Pradesh .....Respondent

52. CWP No. 2423/2025

M/s Alcoprime Distilleries Pvt. Ltd .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

53. CWP No. 3716 /2025

M/s Friends Wine .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

54. CWP No. 576/2026

M/s Shere-Punjab & Company .....Petitioner

Vs.

High Court of H.P.

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State of Himachal Pradesh and others .....Respondents

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

The Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?[1] Yes.

For the petitioner(s):	Mr. Arvind Sharma, Senior Advocate, with Mr. Anil Kumar God, Ms. Shrutika Chauhan, Mr. Ajay Vaidya, Mr. Hamender Singh Chandel, Mr. Virbahadur Verma, Mr. Satish Kumar, Mr. Goverdhan Lal Sharma, Ms. Soma Thakur, Mr. Chander Shekhar Thakur and Mr. Shubham Sood, Advocates, for the petitioner(s), in the respective petitions.
For the respondents:	Mr. Vishal Mohan, Senior Advocate, with Mr. Sushant Keprate, Additional Advocate General, for the respondent-State, in all the petitions.

Ajay Mohan Goel, Judge *(Oral):*

As common issues of facts and law are involved in these petitions and as all the matters were heard together, therefore, they are being disposed of vide a common judgment.

2. For the purpose of facts, as agreed, this Court shall be primarily referring to the submissions made in terms of the pleadings in CWP No. 5590 of 2023, titled *Pradeep Thakur Vs. State of Himachal Pradesh and others,* for reference to the relevant Annexures.

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1 Whether the reporters of the local papers may be allowed to see the Judgment?

High Court of H.P.

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3. The case of the petitioners is that in the month of March, 2023, the Department of State Taxes and Excise, Government of Himachal Pradesh, issued State Excise Policy in the form of Announcements for the Allotment of Retail Excise Vends by Auction-Cum-Tender for the year 2023-24. A copy of the said Announcements is appended with the petition as Annexure P-2. In terms of these Announcements, the licenses, as mentioned in Clause 2.1 of Chapter-II thereof, were to be granted/allotted by way of Auction-Cum-Tender process for the year 2023–24, on the terms and conditions as prescribed in the said Chapter. It was mentioned in Clause 2.5 thereof that the details of location of each retail vend/unit, reserve price, the minimum guaranteed quota of liquor fixed for each vend/unit and other levies as may be applicable, shall be available with the officer mentioned therein, In-charge of the District, who shall display the same on the office notice board for the information of the intending tenderers/bidders, one day before the first day fixed for the receipt of the tenders. As per Clause 2.16 thereof, the District In-Charge was to fix the minimum reserve price of each unit/vend based on the minimum guaranteed quota. It was also mentioned therein that the annual License Fee of a particular vend/unit shall finally be determined based on the highest bid offered by successful tenderer/bidder. In terms of Clause 4.3 of Chapter IV of the said Announcements, the licensee was required to lift 100% of the Minimum Guaranteed Quota prescribed in respect of Country Liquor and IMFS for the vends/units allotted to the licensee. It was

High Court of H.P.

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also mentioned therein that the licensee shall be liable to pay penalty on the un-lifted quota falling short of 80% of the MGQ for the concerned quarter, which shall be payable latest by 5th day of the end of the quarter and for the last quarter by 10th March, 2023. It was further mentioned therein that the penalty shall be levied at the rate of ₹150/- per proof litre on IMFS and ₹50/- per proof litre on Country Liquor on such un-lifted quota falling short of 80% of MGQ. However, if the licensee succeeds in lifting 80% of the annual MGQ in the subsequent quarters, any penalty deposited previously on short-lifting below 80% of the annual MGQ shall be adjusted against the license fee/penalty due for the last quarter of the year 2023–24.

4. It is further the case of the petitioners that thereafter, the Collector Excise-Cum-Additional Commissioner, State Taxes and Excise, Grade-1 (South Zone), Himachal Pradesh issued Communications to the Deputy Commissioners of the State Taxes and Excise of the District concerned, like Annexure P-3, dated 13.03.2023, which was issued to Deputy Commissioner, State Taxes and Excise, Shimla, in terms whereof, the minimum quota was fixed both with regard to Indian Made Foreign Liquor and Country Liquor. According to the petitioners, in the light of the minimum quota which was so fixed, they submitted their tenders as per the Excise Policy Announcements.

5. Their grievance is that thereafter, unilaterally, Commissioner of State Taxes and Excise, Himachal Pradesh, issued

High Court of H.P.

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communication dated 27.03.2023, which is appended with CWP No. 5590 of 2023, as Annexure P-4, on the subject: *"Proposal for approval of revised quota of Excise Units/Vends on the value determined as per Auction-Cum-Tender for the year 2023–24"*, and in terms thereof, the Minimum Guaranteed Quota of IMFL and Country Liquor was arbitrarily enhanced as from the one which was earlier communicated.

6. Learned counsel for the petitioners have primarily argued that the bids were made by the petitioners in the light of the Minimum Guaranteed Quota, as was earlier made public by the Authority concerned to the proposed participants like Annexure P-3 appended with CWP No. 5590 of 2023 and obviously the tenders which were submitted and the rates that were quoted by the petitioners, were in the light of the Minimum Guaranteed Quota as was fixed therein. Learned counsel submitted that the unilateral enhancement of the Minimum Guaranteed Quota vide communication Annexure P-4 dated 27.03.2023 is completely arbitrary, discriminatory and not sustainable in the eyes of law. Accordingly, the prayer of the petitioners is for quashing of communication Annexure P-4 dated 27.03.2023 and for issuance of a direction that Minimum Guaranteed Quota be fixed as per the original Minimum Guaranteed Quota announced by the Department. In all the cases, this is the sole contention that was raised on behalf of the petitioners.

High Court of H.P.

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7. It is again observed by the Court that in all the cases, this was the only contention raised by the petitioners and besides the grievance that the Minimum Guaranteed Quota was arbitrarily enhanced by the Department in terms of Annexure P-4, which action of the respondents, as per the petitioners, was bad in law, no other point was urged by any learned counsel on behalf of the petitioners before this Court. Though in some of the petitions, the petitioners have assailed the demand and the orders, which have been raised by the respondents qua the payment of penalty for not lifting the Minimum Guaranteed Quota, however, no independent arguments were addressed on the legality of the said orders and it was urged that the fate thereof was dependent upon the primary relief qua the legality of Annexure P-4, dated 27th March, 2023.

8. On the other hand, Mr. Vishal Mohan, learned Senior Counsel, who appeared for the State, while justifying the act of the Department on the strength of the Excise Announcements Annexure P-2 in CWP No. 5590 of 2023, submitted that the Department was vested with the power of changing the Minimum Guaranteed Quota. He submitted that after the Excise Announcement was made and the Minimum Guaranteed Quota was made public, bids were submitted by the petitioners and other similarly situated persons and after taking into consideration said bids, in terms of the powers conferred upon the Department, communication dated

High Court of H.P.

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27th March, 2026 (Annexure P-4) was issued, issuance whereof was within the domain of the Department. Learned Senior Counsel argued that otherwise also, the present writ petitions are not maintainable on the ground of acquiescence and estoppel. He submitted that herein, after the Excise Policy was announced for the year 2023–24, the Minimum Guaranteed Quota both for IMFL as well as Country Liquor was issued by the Department for all the Districts and the vends concerned. On the basis thereof, the petitioners submitted their bids. Before the receipt of the bids of the petitioners, Communication dated 27th March, 2023 (Annexure P-4) was issued. None of the petitioners objected to the issuance of Annexure P-4 at the relevant time. Thereafter, i.e., after the issuance of Annexure P-4, the bids of the petitioners were accepted by the Department and at that time also, none of the petitioners either agitated against Annexure P-4 before the Department or before any appropriate Court of law. The acceptance of their bids was unconditional on their behalf and no one lodged any protest of any kind at that stage also qua Annexure P-4. He submitted that thereafter, after the bids of the petitioners were accepted, they commenced the trade in terms of the Excise Policy and contracts entered into between the Department and the petitioners. It was after a lapse of three-four months that the petitioners either represented seeking relaxation of the implementation of the Annual Excise Announcement on the differential of the minimum reserve price/minimum reserve quota or

High Court of H.P.

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approached the Court in this regard. He submitted that as the life of the contract awarded to the petitioners is one year, it was after one-third of the contract period was over that the petitions were filed before this Court. He argued that as earlier, the contracts were entered into by the petitioners without any protest and as the entering into of the contract by the petitioners with the respondent-Department after the issuance of Annexure P-4 without any protest demonstrated their acquiescence to Annexure P-4, therefore, now they are estopped from filing the present writ petitions. He accordingly submitted that all these petitions deserve to be dismissed on this ground alone. Learned Senior Counsel also submitted that the demand and the orders, which have been passed qua recovery of the penalty for not lifting the Minimum Guaranteed Quota and also the forfeiture of the amount of FDRs. etc. of some of the petitioners is also justified, because all this was the out-come of Annexure P-4, dated 27.03.2023.

9. In rebuttal, learned counsel for the petitioners submitted that as the petitioners had approached the Court within a span of three-four months of the award of the tender to them, it cannot be said that the petitions were hit on the ground of delay. They also submitted that there was no acquiescence on the part of the petitioners to Annexure P-4, because they were earlier also protesting with the Department in this

High Court of H.P.

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regard and they were assured that care thereof will be taken at the appropriate stage. Learned counsel also argued that in fact, it was on account of the incessant rains which hit the State in the year 2023, which hit the trade of liquor badly, that the petitioners were initially forced to take up the matter with the Authorities and then to approach this Court. Accordingly, they submitted that in the light of these facts, as the petitions are maintainable, the same be allowed as prayed for.

10. We have heard learned counsel for the parties and have also carefully gone through the pleadings on record.

11. At random, we are quoting the reliefs prayed for in some of the petitions before us alongwith their filing dates. Out of the total writ petitions which were listed before us, more than 30 were filed in the year 2023, about 18 were filed in the year 2024 and the remaining have been filed in the years 2025 and 2026. We will refer to three writ petitions filed in the year 2023, three, which were filed in the year 2024 and one each, which were filed in the years 2025 and 2026, as far as the reliefs prayed for therein are concerned.

12. In CWP No. 5590 of 2023, titled *Pradeep Thakur Versus State of Himachal Pradesh and others*, which is being treated as a lead

High Court of H.P.

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case, as agreed, the petitioners have, *inter alia,* prayed for the following reliefs:-

> *"A. That an appropriate writ, order or direction may kindly be issued to quash the "Enhanced Quota" fixed by the respondents as per letter dated 27.03.2023 (Annexure P-4) and the Annual Minimum Guarantee Quota (MGQ) as fixed vide letter dated 13.03.2023 (Annexure P-3) may please be directed to be restored for all intends and purposes.*
>
> *B. Without prejudice to the above, in the event this Hon'ble Court finds that any of the terms and conditions continue to stand in the way of grant of relief as prayed in A. above, then by way of abundant caution and for the sake of completeness, that too in the alternative it is prayed that in terms of clause 4.3 of the Excise Announcements 2023-24, this Hon'ble Court may be pleased to declare that only the Annual MGQ fixed prior to the conduct of Auction-cum-Tender should alone be taken into consideration for the purpose of applying the said clause for the purpose of imposition of penalty provided therein and not the Enhanced Quota'."*

This writ petition has been filed on 18th August, 2023.

High Court of H.P.

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13. CWP No. 6245 of 2023, titled *Pradeep Barotra Versus State of Himachal Pradesh and others* was filed on 2nd September, 2023 and therein, the petitioner has, *inter alia*, prayed for the following reliefs:-

> *"A. That an appropriate writ, order or direction may kindly be issued to quash the "Enhanced Quota" fixed by the respondents as per letter dated 27.03.2023 and the tabulated list (Annexure P-5) and the Annual Minimum Guarantee Quota dated (MGQ) as fixed vide tabulated list 14/15.03.2023 (Annexure P-4) may please be directed to be restored for all intends and purposes.*
>
> *B. Without prejudice to the above, in the event this Hon'ble Court finds that any of the terms and conditions continue to stand in the way of grant of relief as prayed in A. above, then by way of abundant caution and for the sake of completeness, that too in the alternative it is prayed that in terms of clause 4.3 of the Excise Announcements 2023-24, this Hon'ble Court may be pleased to declare that only the Annual MGQ fixed prior to the conduct of Auction-cum-Tender should alone be taken into consideration for the purpose of applying the said clause for the purpose of imposition of*

High Court of H.P.

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penalty provided therein and not the Enhanced Quota'.

14. CWP No. 6248 of 2023, titled *M/s Mannat Enterprises Vs. State of Himachal Pradesh and others* was filed on 1st September, 2023 and therein, the petitioner has, *inter alia*, prayed for the following reliefs:-

> *"A. That an appropriate writ, order or direction may kindly be issued to quash the "Enhanced Quota" fixed by the respondents as per letter dated 27.03.2023 and the tabulated list (Annexure P-5) and the Annual Minimum Guarantee Quota dated (MGQ) as fixed vide tabulated list 14/15.03.2023 (Annexure P-4) may please be directed to be restored for all intends and purposes.*
>
> *B. Without prejudice to the above, in the event this Hon'ble Court finds that any of the terms and conditions continue to stand in the way of grant of relief as prayed in A. above, then by way of abundant caution and for the sake of completeness, that too in the alternative it is prayed that in terms of clause 4.3 of the Excise Announcements 2023-24, this Hon'ble Court may be pleased to declare that only the Annual MGQ fixed prior to the conduct of Auction-cum-*

High Court of H.P.

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Tender should alone be taken into consideration for the purpose of applying the said clause for the purpose of imposition of penalty provided therein and not the Enhanced Quota'.

15. Similarly, in CWP 10149 of 2024, titled *Agara Devi Vs. State of Himachal Pradesh and others*, the date of filing is 11th July, 2024 and the petitioner therein has*, inter alia,* prayed for the following reliefs:-

"A. An appropriate writ, order or direction may kindly be issued to quash the impugned demand notice dated 25.06.2024 (Annexure P-6) issued by the respondent Deputy Commissioner of State Taxes and Excise, Shimla and to grant refund of the amount of Rs. 58,29,115 paid by the petitioner as per Bank DD dated 29.06.2024 ((Annexure P-7), with interest."

16. In CWP 9644 of 2024, titled *M/s Nirmal Singh Vs. State of Himachal Pradesh and others,* the date of filing is 6th September, 2024 and the petitioner therein has*, inter alia,* prayed for the following reliefs:-

"a) That the order dated 13.10.2023, Annexure P-4 (typed Copy at Annexure P-4/T)., passed by the respondent No. 3, as affirmed vide order dated 20.01.2024, Annexure P. 6,

High Court of H.P.

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passed by the respondent No. 2, may be held illegal and quashed and set aside.

b) That an appropriate writ, order or direction may please be issued to the respondents to quash all the actions taken or subsequent proceedings initiated against the petitioner on the basis of the impugned orders.

c) The respondents may be directed to refund to the petitioner an amount of Rs. 41,39,667/- which has been recovered by the respondents by forfeiting the FDR of the petitioner kept as security with the department and the respondents may be directed pay interest @9% P.A. on the said amount till its actual payment to the petitioner."

17. In CWP 9645 of 2024, titled *M/s Lekh Ram and Company Vs. State of Himachal Pradesh and others,* the date of filing is 6th September, 2024 and the petitioner therein has*, inter alia,* prayed for the following reliefs:-

"(i) That the order dated 13.10.2023, Annexure P-4 (typed copy at Annexure P-4/T), passed by the respondent No. 3, as affirmed vide order dated 20.01.2024, Annexure P-6, passed by the respondent No. 2, may be held illegal and quashed and set aside.

High Court of H.P.

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(ii). That an appropriate writ, order or direction may please be issued to the respondents to quash all the actions taken or subsequent proceedings initiated against the petitioner on the basis of the impugned orders.

(iii). The respondents may be directed to refund to the petitioner an amount of Rs. 64,01,948/- which has been recovered by the respondents by forfeiting the FDR of the petitioner kept as security with the department and the respondents may be directed pay interest @ 9% P.A. on the said amount till its actual payment to the petitioner.

18. In CWP 3716 of 2025, titled *M/s Friends Wine Vs. State of Himachal Pradesh and others,* the date of filing is 17th March, 2025 and the petitioner therein has*, inter alia,* prayed for the following reliefs:-

"A. That an appropriate writ, order or direction may kindly be issued to quash demand letter dated 21-01-2025 (annexure P-8), order or direction may kindly be issued to quash the " Enhanced Quota" fixed by the respondents as per Annexure P-6 and the Annual Minimum Guarantee Quota (MGQ) as fixed vide letter Annexure P-5 may please be directed to be implicated for all intends and purposes.

High Court of H.P.

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B. Without prejudice to the above, in the event this Hon'ble Court finds that any of the terms and conditions continue to stand in the way of grant of relief as prayed in A. above, then by way of abundant caution and for the sake of completeness, that too in the alternative it is prayed that in terms of clause 4.3 of the Excise Announcements 2023-24, this Hon'ble Court may be pleased to declare that only the Auction-cum-Tender should alone be taken into consideration for the purpose of applying the said clause for the purpose of imposition of penalty provided therein and not the 'Enhanced Quota'.

C. That respondents be directed not to retain petitioner and its partners from participating in excise auction for not lifting enhanced MGQ (Annexure P-6) and to comply order date 21-08-2023 passed in CWP No 5590 of 2023 and in connected matters."

19. In CWP 576 of 2026, titled *M/s Shere-Punjab & Company Vs. State of Himachal Pradesh and others,* the date of filing is 29th December, 2025 and the petitioner therein has*, inter alia,* prayed for the following reliefs:-

High Court of H.P.

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“A. That an appropriate writ, order or direction may kindly be issued to quash the "Enhanced Quota" fixed by the respondents as enhanced by Annexure P-6 and the Annual Minimum Guarantee Quota (MGQ) as fixed vide Annexure P-5 may please be directed to be restored for all intends and purposes and demand notice dated 17-12-2025 (annexure P-8) be quashed and set aside.

B. Without prejudice to the above, in the event this Hon'ble Court finds that any of the terms and conditions continue to stand in the way of grant of relief as prayed in A. above, then by way of abundant caution and for the sake of completeness, that too in the alternative it is prayed that in terms of clause 4.3 of the Excise Announcements 2023-24, this Hon'ble Court may be pleased to declare that only the Annual MGO should alone be taken into consideration for the fixed prior to the conduct of Auction-cum-Tender purpose of applying the said clause for the purpose of imposition of penalty provided therein and not the Enhanced Quota'.”

20. Thus, from a perusal of these writ petitions, what is demonstrative is that primarily the petitioners have assailed the enhancement of the Minimum Guaranteed Quota and the subsequent

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

demand notices and in certain cases, the orders which have been passed against them by the Authorities concerned qua the demand notices issued to them in the proceedings initiated for the recovery of the license fee due from them, on account of their non-lifting of the Minimum Guaranteed Quota and also forfeiture of their FDRs. However, crux of the matter remains that the foundation of the grievance of the petitioners is the enhancement of the Minimum Guaranteed Quota.

21. The chronology, as is evident from the petitions filed before us, is that the Excise Policy was announced by the Excise Department for the year 2023-2024 vide Annexure P-2, appended with CWP No. 5590 of 2023, which was approved vide Government Letter dated 07.03.2023. In terms of this Excise Policy, the Commissioner of State Taxes and Excise-Cum-Financial Commissioner (Excise), Himachal Pradesh, reserved the right to sell all or any of the licenses by allotment or by auction or by private contract or by calling tenders or by draw of lots or by any other arrangement which he may consider expedient in the interest of revenue and for the said purpose, the mode of grant of licenses was liable to be changed by the Commissioner whenever necessary before the actual grant of the license. It was also mentioned in the Policy that the Commissioner could also modify the procedure contained in the terms and conditions of the Excise Policy to give effect to such mode of grant of

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

license after determining Fixed License Fee, excise duties or any other levy in such manner as the Authority deemed fit. It was also mentioned in the Excise Policy that all allotments of the vends/units license shall be subject to the confirmation of the Commissioner, who reserved the right to reject any allotment without assigning any reason for the same. The details of the licenses were mentioned in Chapter-II, which were to be granted/allotted by way of Auction-Cum-Tender process for the year 2023-24. The distribution of these vends was to be granted/allotted throughout the State as per the Policy Announcement contained in the document itself. Minimum Guaranteed Quota and Annual Fixed License Fee was dealt with in Chapter-IV of the said Excise Policy.

22. This was followed by the disclosure of the Minimum Guaranteed Quota both for the Indian Made Foreign Liquor as well as Country Liquor District-wise and communication dated 13.03.2023 issued in this regard relating to District Shimla is appended as Annexure P-3 with CWP No. 5590 of 2023. Similarly, the Minimum Guaranteed Quotas were approved for all Districts, as was jointly submitted by the parties before this Court.

23. It was thereafter that the bids were submitted by the petitioners in response to the Excise Policy, taking of course into

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

consideration the Minimum Guaranteed Quota, which was so approved and displayed for each District by the Excise Department.

24. After the petitioners had submitted their tenders, the respondents issued the impugned Communication dated 27th March, 2023 (Annexure P-4), enhancing the Minimum Guaranteed Quota, both for Indian Made Foreign Liquor as well as country liquor.

25. Now incidentally, when this Minimum Guaranteed Quota was enhanced by the Department vide Annexure P-4 on 27.03.2023, none of the petitioners before this Court objected thereto. The bids of the petitioners were accepted by the Department for different Districts and Units, for which they had submitted their bids, in the light of Annexure P-4, dated 27.03.2023, in terms whereof, the Minimum Guaranteed Quota stood enhanced.

26. In between the acceptance of the bid of the petitioners and issuance of Annexure P-4 dated 27.03.2023, there was no objection raised to this enhanced Minimum Guaranteed Quota by any of the petitioners nor any of them approached this Court against the alleged unilateral increase in the Minimum Guaranteed Quota.

27. In fact, even after the bids of the petitioners were accepted by the Department, no formal protest was lodged by any of the

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

petitioners that the acceptance of their bids, in the light of the alleged enhanced Minimum Guaranteed Quota, was under protest as far as the petitioners were concerned and that they reserve their right to agitate the issue before appropriate Court of law.

28. This act of the petitioners obviously demonstrates that after they had submitted their respective bids and thereafter, when the Minimum Guaranteed Quota was enhanced by the Department, they acquiesced to the same by not objecting thereto and accepted the finalization of their bids, knowing fully well that the Minimum Guaranteed Quota, as was held out earlier, stood modified by the Department in terms of notification dated 27th March, 2023 (Annexure P-4).

29. Not only this, after the acceptance of their respective bids, the petitioners, as the Court was informed, deposited the amount etc., which they were to deposit with the Department, as per the Excise Policy and the formal agreements were entered between the parties and commenced the business of selling of the liquor.

30. It is thereafter that these writ petitions have been filed, some in the months of July/August, 2023 and some much later thereafter.

31. Therefore, in the backdrop of the said conduct of the parties, wherein, none objected to the act of the Department of enhancing

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

the Minimum Guaranteed Quota vide Communication dated 27th March, 2023 (Annexure P-4 dated), obviously, the only inference that can be drawn is that the petitioners did not object thereto, as they were not aggrieved by the same.

32. Non-challenge thereto at the appropriate time, amounts to their acquiescence to the said notification.

33. Even after the bids of the petitioners were accepted by the Department, which was in the last week of March 2023, which is not in dispute, none of the petitioners immediately came to the Court objecting to this enhancement in the minimum guaranteed quota. They acquiesced to the acceptance of their bids on the said revised minimum guaranteed quota, acted upon it and commenced their respective businesses in the vends, which were allotted to them.

34. They did not lodge any protest thereto in the month of April, i.e., the first month of coming into force of the Excise Policy or even in the month of May, but as observed hereinabove, accepted the terms and conditions and continued to undertake the business of selling liquor. It is only thereafter in the month of July/August 2023, that the petitioners started coming to the Court, assailing the enhancement of the Minimum Guaranteed Quota, when they failed to lift the Minimum Guaranteed Quota.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

35. The Hon'ble Supreme Court of India in Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another, (2013) 5 Supreme Court Cases 470 has been pleased to observe that a party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefit of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. Hon’ble Supreme Court has observed that this Rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience.

36. Similarly, in *State of Punjab and others Vs. Dhanjit Singh Sandhu, (2014) 15 Supreme Court Cases 144*, Hon’ble Supreme Court has been pleased to hold as under:-

> *“22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. V. MR. P. Firm Muar.)*
>
> *23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any*

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service.) In R.N. Gosain v. Yashpal Dhir this Court has observed as under: (SCC pp. 687-88, para 10)

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."

37. It is settled law that a citizen has no fundamental right to trade or business in liquor as a beverage and activities which are *res extra commercium* cannot be carried on by any citizen and the State can prohibit completely trade or business in potable liquor since trade or business in liquor as a beverage is *res extra commercium.*

38. A Five-Judge Bench of the Hon'ble Supreme Court in *Khoday Distilleries Ltd. and others Vs. State of Karnataka and others, (1995)1 Supreme Court Cases 574*, has been pleased to hold the following as far as the trade of *res extra commercium* is concerned:-

"60. We may now summarise the law on the subject as culled from the aforesaid decisions:-

(a) The rights protected by Article 19(1) are not absolute but qualified The qualifications

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., res extra commercium, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement h of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently, a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes a and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, b under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage."

39. This Court is of the considered view that as the petitioners acquiesced to the enhancement of the Minimum Guaranteed Quota by the Department by not protesting to the enhancement thereafter in terms of Annexure P-4 dated 27th March, 2023, they are estopped from filing and maintaining these writ petitions.

40. The vends in issue are allotted to a successful party for a period of one year from the month of April of the year concerned up to the 31st March of the forthcoming year. Thus, the life of the acceptance of the bid of the successful bidder is twelve months.

41. In the present case, the petitions have been filed by the petitioners in the month of July, 2023 and thereafter against the

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

enhancement of the Minimum Guaranteed Quota, which was done by the Department in the month of March 2023. Thus, there is a delay of three and a half months, at least, in assailing this act of the State, which period, according to us, in the peculiar facts of this case, is fatal.

42. Though, at the first blush, the filing of a writ petitions against a notification issued by the Government just after three months of its issuance does seem to be a challenge with due diligence, but herein, as the life of the vend allotted to the petitioners is twelve months, this means that the petitions were filed before this Court, assailing the enhancement of the Minimum Guaranteed Quota by the State after one-third of the period of the licenses was over.

43. In other words, if we construe that the vend was allotted to the petitioners for a period of 100 years, then the petitioners approached this Court assailing the enhancement in the Minimum guaranteed quota undertaken by the Government after about 30 years as from the date of the enhancement under challenge and also from the date when the bids of the petitioners were accepted.

44. Therefore, in a case where the life period of the tender itself is twelve months, approaching a Court of law after one-third of the currency of the license is over, obviously amounts to delay.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

45. No plausible explanation was given by the petitioners as to why there was no challenge to the increase in the Minimum Guaranteed Quota at the time when the same was done by the Government.

46. The contention of the learned counsel, generally was, that at the relevant time, taking into consideration the business as it was, the petitioners were under the *bona fide* belief that they would be in a position to lift the Minimum Guaranteed Quota. They submitted that as later on, on account of natural calamities etc., they were not able to lift the Minimum Guaranteed Quota, it was in these circumstances that they approached the Court of Law seeking the setting aside of the enhancement of the quota.

47. This Court is of the considered view that not challenging the enhancement of the Minimum Guaranteed Quota immediately after the enhancement was done by the Department, which enhancement was before the bids of the petitioners were accepted, has to be construed that the petitioners were not indeed aggrieved by the said enhancement in the Minimum Guaranteed Quota, otherwise, at least some amongst them should and would have approached the Court at the relevant time. They approached the Court only after they were unable to lift the minimum guaranteed quota. This, according to us, is no reason to entertain belated petitions, wherein the petitioners are otherwise barred from assailing the notification on account of their own act of acquiescence and estoppel.

High Court of H.P.

::: Downloaded on - 07/11/2026 19:46:16 :::CIS

48. Therefore, in light of above discussions, as according to us, these petitions are not maintainable, as the petitioners are estopped by their act of acquiescence and are hence estopped from filing these petitions, the same are dismissed. Same is the fate of other petitions also, in which, the petitioners have assailed the notice and subsequent orders passed by the Authorities, as all of them owe their foundation to Notification dated 27.03.2023 (Annexure P-4), with which, the Court has not interfered in these petitions. Interim orders, if any, stand vacated. Pending Miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 29, 2026
(bhupender)

High Court of H.P.

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