

(1992) 03 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13963 of 1990

Deluxe Bar and Others

APPELLANT

Vs

The Excise Superintendent and Others

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 24, 25, 65
Andhra Pradesh Excise Act, 1968 — Section 28, 72(2)
Constitution of India, 1950 — Article 14, 226

Citation : (1992) 2 ALT 314 : (1992) 2 APLJ 14

Hon'ble Judges : P. Venkatarama Reddi, J; M.N. Rao, J

Bench : Division Bench

Advocate : B. Prakash Rao, T. Raghunatha Reddy, K.G. Kannabiran, A. Rajendraprasad, R. Satyanarayanaraju, L. Nageswararao, G. Bikshapathy, M. Ankineedu Prasad, A. Satyaprasad, M. Balajidas, G. Pramod Kumar, B. Nageswararo, G. Vedantharao, K.L.N. Swamy, T. Suryakaranreddy, V. Satyamreddy, B. Madhavareddy, P. Rajagopal Rao, P. Gnaneshwargoud, N. Sreedhar, P. Naveen Rao, Harshavardhan, S. Venkateswarreddy, P. Subba Rao, Ghanta Ramarao, D.V. Sitarammurthy, Ganesh, G. Buchaiahgoud, A. Sudarshanreddi, K. Devraj, G. Balram, N. Venkatreddy, V. Ravinderrao, K.V. Upendragupta, M. Srinivas, S. Ravindranath, P. Laxma Reddy, in WP.No. 3818, for the Appellant; The A.G. and The Government Pleader, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The increase in the licence-fee for various categories of liquor licences by G.O.Ms.No. 160 Revenue (Ex.III) dated 3-3-1990 has led to the filing of this batch of writ petitions.

2. The petitioners herein, by and large, are holders of wholesale licence (FL 15), retail licence (FL 24), bar licence (FL 17) and storage licence for godowns (FL 19). A few of them are having distributor's licence (FL 27). The grant of these licences is governed by the provisions of the Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 issued under the Andhra Pradesh Excise Act, 1968, hereinafter referred to as "the Rules" and "the Act" respectively.

3. Section 15 of the Act enjoins that no person shall sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of a licence granted in this behalf. u/s 17 of the Act, the Government may, subject to such conditions as they may deem fit to impose, grant for a fixed period to any person at any place a lease or licence or both either jointly or severally for the exclusive privilege of manufacturing and/or of supplying any liquor or intoxicant by wholesale or selling by wholesale or by retail. Under Sub-section (2) thereof, the Government may confer on any officer the power to grant a lease or licence. Section 17 is subject to the provisions of Section 28 and the Rules made there under. Section 28 lays down that every licence granted under the Act lays down that every licence granted under the Act shall be subject to payment of such fees, for such period, subject to such restrictions and conditions and shall be in such form as may be prescribed. Section 31 deals with the power to cancel or suspend the licence. Inter alia, it says/if any duty or fee payable by the holder thereof is not duly paid, the licence may be cancelled or suspended. Section 72 confers the rule-making power on the Government. The Government may make rules for carrying out all or any of the purposes of the Act. In particular, the Government may make Rules regulating the time, place and manner of payment of any duty or fee and the taking of security for the due payment of any duty or fee- (Vide Clause (g) of Section 72(2)). Under Clause (h) the Government is empowered to prescribe the authority by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted or issued and may, by such rules among other matters prescribe the scales of fees or the manner of fixing the fees payable in respect of any lease, licence or permit or the storing of any excisable article. Sub-section (3) of Section 72 enables the Government to make the Rules retrospectively as well. The Sub-section also says that when such a rule is made, the reasons for making the rule shall be specified in a statement to be laid before the Legislature. Every rule made under the Act is required to be laid before the House of the State Legislature within the stipulated time.

4. In exercise of the powers conferred by Section 72 read with Section 28 and other sections, the A.P. Foreign Liquor and Indian Liquors Rules were framed in the year 1970. "Indian liquor" includes wines and beer, but does not include arrack. Foreign liquor" is defined by Section 2(16) of the Excise Act as including every liquor imported into India other than Indian liquor and arrack. The expression "Excise year" is defined as a period of 12 months commencing on the 1st day of October of the year and ending with the 30th day of September of the following year (Vide Rule 3(c)). Rule 23 specifies various categories of licences that have to be obtained for the sale of foreign liquor and Indian liquor. Rule 23 then prescribes the Forms of licences, the quantity of liquor and the manner in which it is to be sold under each of the licences. Rule 24 lays down that every licence other than the occasional licence in Form FL 22 or Special licence, shall be valid for a block period of five Excise Years, the first block period commencing from 1st October, 1987, subject to payment of annual licence fee prescribed. The

Rule further says that the licence issued at any time during the said block period of five Excise Years shall be operative up to the end of the block period. Earlier, i.e., before the amendment of the Rule in the year 1987, the licence was being granted only for one excise year ending on 30th September. Rule 25 is the material provision which deals with licence fee. Rule 25 enjoins that "the annual licence fee for each of the licences referred to in Rule 23 shall be at the rates as shown in the Schedule appended to these Rules." The mode and time of payment of annual licence fee is then set out:

"The annual licence for an excise year shall be paid 10 days before the commencement of the Excise year to which it relates either in full in advance or in the alternative in six monthly instalments under Sub-rule (2) together with a Bank Guarantee of a Scheduled Bank situated in A.P. in Form FL 30 or Fixed Deposit Receipt/National Savings Certificate for an amount equal to 10 months" proportionate licence fee. The Bank Guarantee shall be valid for a period of 12 months and shall be furnished from time to time 2 months before its expiry."

Sub-rule (2) of Rule 25 lays down that the "bi-monthly instalment shall be paid through challan in to Government Treasury 10 days prior to the commencement of the two months block period to which it relates." The schedule sets out the quantum of licence fee payable in relation to each category of licence.

5. By the impugned G.O. viz., G.O.Ms.No. 160 Revenue (Ex.III) Department dated 3-3-1990, the Schedule was amended resulting in enhancement of licence fee for various categories of licences. The increase of licence fee in relation to FL 15, FL 17, FL 19, FL 20, FL 24 and FL 27 is roughly between 10 and 25%. However, in respect of the Storage licence (FL 19), the licence fee was fixed at Rs. 10,000/- which is about three to five times more than the fee charged earlier. Except in the case of Storage licence, the licence fee for the same type of licence varies depending upon population of the village/town/city, the status of the local authority concerned and in some cases depending upon the authorities competent to issue the licences. The licence fee was first enhanced in the year 1978; the second enhancement was with effect from 1-10-1987; and the third enhancement was by the impugned G.O. The enhancement which was made in the year 1978 was challenged in a batch of writ petitions in this Court. A Division Bench of this Court upheld the same in *Paradise Bar v. Govt. of A.P* 1989 1 APLJ 13. The prescription of enhanced licence-fee by G.O.Ms.No. 817 dated 27-8-1987 was upheld by a learned single Judge (P.A. Choudary, J.,) holding that "no citizen has a right to trade in these intoxicants except as a grant from the State which is free to impose all conditions on such grant with a view to enhance its revenues." (*Vide Sree Durga Wines v. Excise Superintendent*) 1988 1 ALT 585. The amendment made by the G.O. with which we are concerned, namely, G.O.Ms.No. 160 dated 3-3-1990 has come into force from 1st April, 1990. A brief reference may be made to the present rates of licence-fee. For FL 15 wholesale licence granted by the Excise Superintendent, the licence-fee is Rs. 53,000/- per year irrespective of population of the place where the shop is located. However,

in respect of the wholesale licence granted by the Commissioner of Excise, the licence-fee is Rs. 80,000/- per year. In regard to FL 17 Bar licence, the minimum is Rs30,000/-- whereas the maximum is Rs. 1,00,000/- per year. The licence fee for FL 24 retail licence varies from Rs. 23,000/- to Rs. 70,000/-. By the time the amended G.O. came into force, the fourth bi-monthly instalment of licence which fell due was paid by bet of the petitioners. The Excise authorities started demanding fifth bi-monthly instalment of licence-fee at the enhanced rate calculated on proportionate basis. This has given rise to the filing of these writ petitions.

6. The contentions of the learned Counsel Sri V.V.S. Rao and Sri G. Bikshapathi, appearing for some of the petitioners are briefly as follows:

(1) The enhancement of licence fee is arbitrary and unreasonable and hence violative of Article 14 of the Constitution:

(2) The licences having been issued for a block period of five years, any enhancement effected during the currency of the licence shall not affect the existing licences;

(3) In any case, the enhancement will come into effect only after the end of the excise year i.e., after 30-9-1990 except in-relation to the licences issued on or after 1-4-1990.

7. The other Counsel appearing for the writ petitioners adopted the arguments of Sri V.V.S. Rao and Sri Bikshapathi. The learned Advocate General appearing for the State opposed these contentions and supported the impugned G.O. and the amendments made thereunder on various grounds which we will advert to later.

8. Re. Point No. 1: The learned Counsel for the petitioner Mr. V.V.S. Rao submits that the A.P. Excise Act or the Rules do not lay down any guidelines for the fixation and enhancement of licence fee. In the absence of such guidelines, according to the learned Counsel, there must be some discernible basis for the substantial increase in the licence fee. Such a basis or reason for enhancement is not to be found anywhere - not even in the counter-affidavit. The only apparent reason that induced the State Government to make an upwards revision of licence fee is to raise revenue. The resultant hardship to the petitioners caused by the unexpected rise in the licence fee and its adverse impact on the business has not been obviously considered at all. The learned Counsel therefore submits that the enhancement of licence fee brought about by the impugned G.O. is wholly unreasonable and arbitrary. The learned Counsel submits that having regard to the unreasonable nature of the levy, Article 14 is violated and there is no bar to invoke Article 14 of the Constitution even in relation to the liquor trade. On the other hand, the learned Advocate General submitted that the Government can prescribe its own terms for granting the privilege of dealing in liquor which is otherwise vested in the State. The petitioners being fully aware of their obligation to pay the licence fee levied from time to time have voluntarily sought for and obtained the licence. Having done so, it is not open to them to complain

against the enhancement. The learned Advocate General then contended that the collection of revenue even if it be the sole object of the impugned G.O. does not violate any constitutional provision. With reference to Article 14, the learned Advocate General submits that the validity of enhancement of licence fee cannot be judged from the stand point of reasonableness when once the plea of reasonableness from the stand point of Article 19(1)(g) is not available to them because of the inherent nature of the trade or business in liquor. The learned Advocate General further submits that even assuming that the quantum of increase of licence fee is a justiciable issue, the increase in the present case is not so high as to shock the conscience of the Court and hence no interference is called for.

9. In appreciating the arguments advanced, it is necessary to bear in mind the true nature and character of "fee" prescribed by the Excise Law for obtaining a licence to manufacture or deal in liquor. A Constitution Bench of the Supreme Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, speaking through Chandrachud, J., (as he then was) clarified while dealing with the provisions of the Punjab Excise Act that the word "fee" is not used in the Act or the Rules in the technical sense of that expression. "The amount charged to the licensees is not a fee properly so-called, nor a tax but is in the nature of the price of a privilege, which the purchaser has to pay in any trading or business transaction." The Supreme Court held that the licence fee need not conform to the requirement that it must bear a reasonable relationship with the services rendered to the licensees. The Division Bench of this Court in *M/s. Paradise Bar* case (1 supra) while upholding the increase in the licence-fee made in the year 1978, reiterated the said principle stating that "the licence fee even where it is a fixed fee, is charged by way of consideration for granting the privilege to the licensees to vend liquor and hence no question of quid pro quo arises." The Division Bench rejected the contention that the licence fee being exorbitant, it constitutes "duty" and the duty by way of licence fee can be levied only by way of notification as envisaged by Sections 21 and 22(d) of the Act but not in the manner in which it had been done. The concept of licence-fee under the Excise law as expounded by the Supreme Court implies that the fee could be prescribed or enhanced by the State for the sole purpose of realising revenue without being tied up to an obligation to render special services to the licensees.

10. Coming then to the specifics of the problem, the question of reasonableness of the levy or fee would arise either from the stand-point of Article 19(1)(g) or Article 14 of the Constitution. As far as Article 19(1)(g) is concerned, its application in relation to trade in liquor was ruled out by the Supreme Court in *Har Shankar's* case. The Supreme Court observed:

"There is no fundamental right to do trade or business in intoxicants. The State under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State

and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants.

Referring to Krishna Kumar Narula v. State of J & K., AIR 1967 SC 136 the Constitution Bench observed:

"The Court did not say, though such an implication may arise from its conclusion that the citizen has a fundamental right to do trade or business in liquor. It is significant that the judgment in Krishnakumar Narula's case does not negate the right of the State to prohibit absolutely all forms of activities in relation to intoxicants. The wider right to prohibit absolutely would include the narrower right to permit dealings in intoxicants on such terms of general application as the State deemed expedient."

The Constitution Bench also cited with approval the following passage in State of Orissa and Others Vs. Harinarayan Jaiswal and Others, .

"If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government, nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights."

The principles laid down in Har Shankar's case were reiterated by the Supreme Court in Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others, . In that case the Supreme Court also referred to P.N. Kaushal and Others Vs. Union of India (UOI) and Others, and held that "there is no fundamental right to trade or business in noxious drinks which includes liquor. If there is no fundamental right to carry on trade in liquor, there is no question of its abridgement by any restriction which can be styled as unreasonable.

After referring to Kalyani Stores Vs. The State of Orissa and Others, . wherein the Supreme Court struck a somewhat different note, it was observed:

"However, the undisputed position that now emerges is that there is no fundamental right to do trade or business in intoxicants. Once that latter pronouncement is unambiguous and incontrovertible, a regulatory measure imposing a tax cannot be questioned on the ground of unreasonableness or want of public interest because one must not lose sight of the well accepted legal proposition that all taxes are imposed in public interest."

Thus, notwithstanding what has been said in Krishnakumar Narula's case (4 supra) it can be taken as settled law that a citizen has no fundamental right to carry on the business or trade in intoxicants. The reason is that the State has the exclusive right or privilege of manufacture and sale of liquor and that the State is endowed with the police power to prohibit and regulate trade in noxious or dangerous goods. (Vide Nashirwar and Others Vs. State of Madhya Pradesh and Others, .

11. Our attention has been invited to a Division Bench Judgment of this Court in W.P.No. 16972/88 & Batch, dated 20-11-1989. The Division Bench held that the retrospective effect given to the amended Rule taking away the benefit of proportionate remission in issue price and privilege fee in regard to short-supplied quantity of arrack was violative of Article 19(1)(g). With great respect, we must say that the learned Judges did not notice the authoritative pronouncements of the Supreme Court, especially Har Shankar's case which categorically ruled out the applicability of Article 19(1)(g) in matters relating to the business in intoxicants. With great respect to the learned Judges, we must observe that the decision was per incuriam. However, we need not dilate further on this aspect because in our considered view, the impugned law is not vulnerable to attack on the ground of being an unreasonable restriction.

12. Now, let us turn our attention to Article 14. Unreasonableness or non-arbitrariness as a facet of equality clause enshrined in Article 14 is an innovation of later origin. This principle found its echo first in E.P. Royappa Vs. State of Tamil Nadu and Another, and reaffirmed in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . Whether the validity of a law regulating the trade and dealings in liquor could be decided on the touch-stone of reasonableness is not free from doubt. If a person has no fundamental right to carry on business in intoxicants and cannot complain of his business being unreasonably affected by operation of such law for the purpose of Article 19(1)(g), can he still complain that the law being so unreasonable as to make serious inroads into his business, violates the equality Clause? It is highly doubtful whether a citizen who cannot claim the fundamental right to carry on trade in liquor and who cannot complain of unreasonable restrictions on his business, can still attack a law which accords similar and uniform treatment to all the traders of the same class by drawing out the yardstick of reasonableness from Article 14. However, for the purpose of this case, we need not express our final opinion on this larger question because we are convinced that there is no element of unreasonableness or arbitrariness in the impugned law.

13. The Supreme Court in State of M.P. and Others Vs. Nandlal Jaiswal and Others, while observing that when the State decides to grant the right or privilege of manufacturing and selling liquor to others, the State cannot escape the rigour of Article 14 and that it must comply with the equality clause, added an important qualification in the following terms:

"While considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate

to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or male fide."

The Supreme Court made the above observations after referring to the Constitution Bench judgment in Harshankar's case. The observations made by the Supreme Court in the context of applicability of Article 14 were cited with approval by K. Ramaswamy, J., speaking for the Supreme Court in *Doongaji & Co., v. State of M.P.*, AIR 1991 SC 1942. In referring to Article 14 whether the Supreme Court had in mind the entire gamut of Article 14 including in its sweep the element of reasonableness, is not quite clear.

14. Be that as it may, we are not persuaded to accept the argument that the enhancement in licence-fee brought about by the impugned CO. suffers from the vice of unreasonableness or arbitrariness. It should be noted that the last increase in the licence fee was in the year 1985 for FL17 and FI 24 licences and for other licences, it was during the year 1987. The State Government thought of making further enhancement on the basis of the proposals submitted by the Commissioner of Excise on 14-8-1989. If the State Government deemed it fit to enhance the licence fee after a time gap of 3 to 5 years, keeping in view the need to mobilise the additional resources and the desirability of limiting the number of licences in certain categories as per the recommendations of the Commissioner of Excise, there is nothing arbitrary or unreasonable in it, especially having regard to the best possible consideration for parting with its exclusive right to deal in intoxicants. It is relevant to notice that the quantum of increase, except in the case of storage licence, is not at all high. The percentage of increase ranges between 10 and 25%, as already indicated. The increase is neither unreasonably excessive nor unconscionable. It is no doubt true that there is steep increase of fee for storage licence (FI 19). The storage licence fee which was quite meagre before is now stepped up uniformly to the level of Rs. 10,000/- in respect of district wide licence, statewide licence and distributor-licence. But, the prescription of licence-fee at Rs. 10,000/- thereby recording an increase of three to five times cannot be considered to be unconscionably high. It affects only such category of dealers as are having extensive business viz., wholesalers, distributors etc. Moreover we should concede a wide latitude to the State in the matter of fixation of fee in view of the inherently diverse factors that influence such fixation. It is not for this Court to test the justification for increase on a-priori notions or by drawing logical parallels. The quantum of fee to be charged from a licensee in consideration of parting with the exclusive privilege of the State is essentially within the discretion of the State and so long as such discretion is exercised in furtherance of public interest and the State does not make an irrational classification or hostile discrimination, there is hardly any scope for invalidating the same. The mere fact that the increase in the licence-fee makes an erosion of profits to the licensees or makes their business less lucrative is not a ground to strike down the law as unreasonable offending Article 14 of the Constitution. In fact, no material or date has been placed before us in any of these writ petitions that the increase of licence fee for various licences

operates harshly or oppressively against the petitioners. Having regard to all these circumstances, we have no hesitation in rejecting the argument of the learned Counsel on this point.

15. Re. Point No. 2: It is the contention of the petitioners' Counsel that the enhanced rate of licence fee is not applicable to the licences issued before the impugned G.O. came into force. Under Rule 24 of the A.P. Foreign Liquor and Indian Liquor Rules, the licence is granted for a block period of five excise years in consideration of the payment of specified annual licence fee. There is nothing in Rule 24 or Rule 25 which imposes an obligation to pay the licence-fee subsequently enhanced during the period of currency of the licence. The learned Counsel relying upon the phraseology of Rule 72(2)(h) which confers the rule-making power, contends that the fee prevalent at the time of grant alone governs and that the rule-making power does not extend to enhancement after the licence is granted. According to the learned counsel, the annual licence fee as prescribed means the fee prescribed on the date of licence. The learned Counsel also relied upon the language employed in Section 29 to contend that the counter-part agreement that is executed by the licensee should be "in conformity with the tenor of licence" and that unless there is a specific provision in the licence itself providing for enhancement, the stipulation in the counterpart agreement is void and unenforceable. The learned Advocate General has refuted these contentions by relying, inter alia, on Section 13 of the A.P. General Clauses Act, Rule 65 of the A.P. Foreign Liquor and Indian Liquor Rules and Clause (iv) of the counter-part agreement (FL 28). It is his contention that the duration of the licence cannot belinked up with the payment of licence fee. The obligation to pay licence-fee is an independent obligation flowing from Rule 25 read with the Schedule and there is no warrant for the interpretation that licence-fee cannot be altered during the block period of five years. The learned Advocate General submitted that on a reasonable interpretation, the enhanced licence fee whenever it comes into force, will be operative even in respect of the existing licences.

16. We see no force in the contention of the petitioners. In our view, the duration of licence does not have a bearing on the question whether the licence-fee could be enhanced during the currency of the agreement. Rule 24 clearly obligates the licensees to pay the annual licence-fee as prescribed. Lack of words "from time to time" following the expression "as prescribed" does not make material difference. If the contention of the petitioners is to be accepted, the imposition of condition to pay the annual licence-fee (Vide Rule 24), the prescription of annual licence fee for an excise year and the time and mode of payment thereof (Vide Rule 25) become purposeless and perhaps, superfluous. The scheme of Rules 24 and 25 does not fit into the theory that the licence-fee is fixed once and for all for a block period of five years and that the quantum of licence fee fixed on the date of issuance of licence shall be the same for the remaining four years. The petitioners cannot draw any support from the proforma of the order granting licence. The fee specified in the proforma is the actual fee paid by the licensee in

the first instance before obtaining the licence. The form of licence issued has to be read along with the counter-part agreement. The counter-part agreement is required to be entered into u/s 29 of the Act read with Rule 30(3). Rule 30(3) says that "the applicant before issue of the licence, shall execute a counter-part agreement in Form FL 28 on the stamp paper of value specified by the Government from time to time". In the counter as well as in the course of arguments of the learned Advocate General, much reliance has been placed on Clause (iv) of the agreement which is to the following effect:

"That I/we shall be bound to pay the licence fees, gallanage fee, Excise duty and Security deposit or any enhanced licence fee, gallanage fee, excise duty and security deposit, and the like levied from time to time."

Thus the said clause clearly contemplates that the licence fee could be enhanced during the currency of the agreement i.e., during the five year period. The licensee binds himself to pay the enhanced licence fee levied from time to time. In order to get over the effect of Clause (iv) of the counter-part agreement, the learned counsel for the petitioners contends that Clause (iv) in so far as it imposes an obligation on the licensee to pay enhanced licence fee is not in accordance with Section 29. According to the learned counsel, the counter-part agreement shall be "in conformity with the tenor of the licence". Clause (iv) of the counter-part agreement, according to the learned counsel, goes beyond the tenor of the licence. We are unable to accept the interpretation put forward by the learned Counsel. The mere fact that the proforma of licence is silent about the subsequent variation or enhancement of fee, we cannot infer any inconsistency between the licence and the counter-part agreement. The special conditions mentioned in the proforma of licence are not exhaustive. In fact, the licence itself makes it clear that the general conditions applicable to all "Indian Liquor, foreign liquor and beer licences as may be prescribed" should also be read into the licence. The licensee should also comply with all orders or directions issued from time to time under the Act and the Rules. (Vide Rule 65). By introducing a stipulation in the counter-part agreement that the licensee undertakes to pay the fee that might be enhanced, Clause (iv) of the counter-part agreement and the licence do not run on divergent lines. Clause (iv) only makes it explicit the obligations that flow from Rules 24 and 25 and in that sense, it supplements the conditions of licence but does not change the "tenor" of the licence.

17. The learned Counsel for the petitioner endeavoured to fortify their argument by relving on the language of Clause (h) of Section 72(2) of the Act which is as follows:

"(20). In particular and without prejudice to the generality of the foregoing provision, the Government may make rules, (h) prescribing the authority, by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted or issued and may, by such rules, among other matters- (ii) prescribe the scale of fees, or the manner of fixing the fees

payable in respect of any lease, licence or permit, or the storing of any excisable article."

According to the learned Counsel, the prescription of scale of fee payable in respect of a licence can only take place once, that is to say, at the point of time at which the licence is granted. In the absence of specific authority given to the rule-making authority to vary the scale of fee once prescribed, the learned Counsel contends that the rule-making authority has no power to make a rule increasing the licence-fee so as to affect the existing licensees. We see no force in this contention either. First of all, the specific provision in Clause (h) of Section 72(2) is without prejudice to the general power conferred on the Government to make rules for carrying out all or any purposes of the Act. It cannot be said that the enhancement of licence-fee for relevant reasons, does not subserve the purpose of the Act, which is, inter alia, a revenue raising enactment. That apart, when power is given to prescribe the scale of fee in respect of a licence, that power can be exercised from time to time as the occasion may require (Vide Section 13 of the A.P. General Clauses Act). Looked at from any angle, we do not think that the wording of Section 72(2)(h) will in any way help the petitioners.

18. The learned Counsel Mr. V.V.S. Rao sought to draw support from the judgment of HarShankar's case at paragraphs 64 and 65. In that case, the orders granting renewal of licences were passed on 20th January 1968. The rules were amended on 22nd and 30th March, 1968 under which the appellants before the Supreme Court became liable to pay an additional amount of fee. The grievance of the appellants was that since their licences were renewed in January 1968, the amendments made in March 1968 cannot apply to them and therefore the demand made on the basis of the amended rules was illegal. The Supreme Court rejected the contention in the following terms:

"It is true that the amendments under which the appellants have been called upon to pay fixed fees were made after the licences were renewed. But the licences, though renewed in January, 1968, were to be effective from April 1, 1968. The amendments having come into force before April 1, would govern the appellants' licences and they are, therefore, liable to pay the fixed fees under the amended Rules.....The rules made u/s 59(d) authorise the imposition of additional fees and such authorisation would operate on all licences to be effective thereafter."

The Supreme Court was not concerned with the question that arises for consideration before us. It cannot be contended by implication that the Supreme Court laid down the principle that the licence fee applicable at the time of issuance of the licences would hold good for the entire period of licence irrespective of the amendments made thereafter. The Judgment of the Supreme Court on this aspect may perhaps help the petitioner in regard to third point but not on this aspect.

19. Before we close our discussion on this aspect, we would like to observe that

it would not have been the intention of the Legislature or the rule-making authority that the licence fee once fixed initially at the stage of granting licence should remain static for five long years. If we accept the contention of the petitioners, the very purpose of realising revenue from an important source will be frustrated. The State will be crippled from exercising its undoubted regulatory power. In the absence of clear words to that effect, we are not prepared to accept the argument that by enhancing the licence fee under the impugned amendment, the rule making authority wanted to except the existing licences from the burden of increase. We see no warrant for such interpretation.

20. Re. Point No. 3: The learned Counsel for the petitioners contend that as the amended Schedule to Rule 25 came into force from 1-4-1990, the respondents have no authority to demand the payment of increased licence fee for the remaining part of the year. In other words, in respect of the licences which were in force at the beginning of the excise year, the subsequent increase during the middle of the year will not be effective till the close of that year. It is therefore submitted that the Excise authorities cannot demand the 5th or 6th bi-monthly instalment falling due on 21st May and 21st July by adding to the existing licence fee a proportion of increased licence fee. In order to appreciate this contention, we have to consider what exactly is the basis and character of the licence fee that the petitioners are called upon to pay under Rule 24 read with Rule 25. The true character of the licence fee could be discerned from the very language employed in the Rules and the scheme prescribed for payment of the fee. Both Rule 24 and Rule 25 in unequivocal terms speak of annual (underlining is ours) licence fee. The prefix "annual" was added in the year 1987 when the period of licence was changed from one year to 5 years. Rule 25 reinforces the idea of licence-fee being annual in character. From Rule 25, it is clear that the annual licence fee is for an excise year i.e., for a period of twelve months commencing from 1st October and ending with 30th September of the following year. It is also clear from the said Rule that when once the annual licence fee in force before the commencement of the excise year is paid by the licensee, his obligation is discharged. The Rule enjoins that "annual licence-fee for an excise year shall be paid ten days before the commencement of the excise year to which it relates either in full or in advance or in the alternative in six monthly instalments under Sub-rule (2)...." Thus, the liability is to pay the annual licence fee prescribed and in force at the commencement of the excise year. It can be paid either in advance or in six bimonthly instalments as specified in Sub-rule (2). The provision for payment by way of bi-monthly instalments does not detract from the character of the licence fee being annual in character and the fee being liable to be paid at the rates in force at the beginning of the excise year. The mere fact that the facility of instalments is given to the licensees does not alter the basic character of the licence fee being annual and being otherwise payable at the beginning of the excise year. While creating the liability to pay the annual licence-fee as prescribed at the beginning of the year, the rule-making authority has introduced an enabling provision giving the facility of discharging that liability by

way of instalments. It is therefore difficult to appreciate the argument advanced by the learned Advocate General in this regard.

21. There is another weighty consideration as to why the increase in the licence fee coming into force in the middle of the excise year should not be applied to the licence in force at the beginning of the excise year. Supposing a licensee had paid the annual licence fee in one lumpsum ten days before the commencement of the year as laid down in Rule 25, can he be called upon to pay additional amount calculated on proportionate basis consequent upon the increase in the licence-fee from 1-4-1990? The answer should be in the negative. There is no provision under which such a demand could be made and the methodology of making such a payment is not provided for by the rules.

22. On the same lines, let us approach the problem from the angle of a licensee who opts to pay the annual licence fee in bi-monthly instalments under Sub-rule (2) of Rule 25. Rule 25 contemplates equal division of annual licence fee spread over to six bi-monthly instalments, it also contemplates a bank-guarantee to be furnished for an amount equal to ten months' proportionate licence-fee. It is therefore implicit that the fixation of the instalment amount as well as the amount for which bank guarantee is to be furnished is done before the commencement of the year and the calculation naturally proceeds on the basis of the annual licence-fee then in force. Here again, there is no specific provision under which the bi-monthly licence-fee could be varied and higher amount demanded some time during the year; nor is there a provision to call upon the licensee to furnish bank guarantee for a revised amount based upon an amendment that might come into force during the year. It only shows that the rule-making authority did not intend that the annual licence fee prescribed at the beginning of the year shall undergo a change by virtue of the amendment brought into force in the middle of the year. The concept of annual licence-fee was in the forefront of the mind of the rule-making authority.

23. It should also be noted that the amendment to the Schedule introduced by G.O.160 dated 3-3-1990 is not retrospective in operation as is the case with G.O.Ms.No. 74 dated 1-2-1990 relating to licence fee on distilleries. At any rate, there is no clear language in the amended provision which go to show that the enhancement will affect the existing licensees during the year itself. It cannot therefore be said that the increased quantum of licence fee brought about by the impugned G.O. should be projected into the Schedule of rates prevalent at the beginning of the year. Thus, viewed from any angle, we should uphold the contention of the learned Counsel for the petitioners and hold that the enhanced licence-fee introduced by the impugned G.O. will only be operative after the end of the excise year i.e., after 30-9-1990 and for the excise year beginning from 1st October 1990, the licensees have to pay the increased licence-fee ten days before the commencement of the excise year (1990-91) as enjoined by Rule 25. The increased licence-fee will also be applicable to the licences issued on or before 1-4-1990 i.e., the date on which the impugned G.O. has come into force.

24. The learned Advocate General has contended that no particular significance need be attached to the word "annual" occurring in Rules 24 and 25 and that the real stress should be on the obligation to pay the licence fee at the rates shown in the schedule. The learned Advocate General argues that excise year need not necessarily be taken as a unit to determine which rate is applicable. According to him, the rate of licence fee, whenever it is altered will operate in respect of future period irrespective of the fact whether that period falls within the excise year already commenced or not. We are unable to accept this contention. It is not appropriate and reasonable to place an interpretation which has the effect of dissociating the words "annual licence fee" and "excise year" from the "rates set out in the schedule". As already observed by us, the idea of annual character of the licence fee is clearly brought out by the scheme envisaged by Rules 24 and 25 and the manner of discharge of liability expressly enjoined by the second para of Sub-rule (1) to Rule 25.

25. The learned Advocate General then relied upon clause (iv) of the counter part agreement (Form F.L.28) to which we have already made reference. The learned Advocate General submits that having agreed to pay the enhanced licence fee levied from time to time, the petitioners cannot wriggle out of their obligations. In this connection, reliance has been placed on the observations of the Supreme Court at paragraphs 12 and 13 in *State of Punjab v. Jage Ram* AIR 1980 S.C 2018 . In coming to the conclusion that the licence fee can be altered during the period of subsistence of licence (Vide Point No. 2), we have inter alia relied upon Clause (iv) of the counter-part agreement. While it cannot be disputed that the licensees have an obligation to pay the enhanced licence fee, the extent of such obligation and the point of time at which the liability arises could only be discerned from the relevant rules. We cannot read Clause (iv) of the counterpart agreement so as to create a liability to pay the licence fee at the enhanced rates the moment the enhanced rates came into force, irrespective of the charging provision. We have, therefore, no hesitation in rejecting this argument as well.

26. The net result is that the writ petitions are to be allowed partly. While we uphold the enhancement of licence fee by the impugned G.O.Ms. No. 160 dated 3-3-1990, we declare that the enhanced licence fee is liable to be collected from the petitioners only from the excise year commencing on 1-10-1990. If the petitioners have paid the licence fee at the old rates in bi-monthly instalments or otherwise during the excise year 1989-90, nothing more should be demanded from them towards the licence fee for the year 1989-90. Two months' time is given to the petitioners for payment of the entire arrears of licence fee which remain unpaid on account of the stay orders granted by this Court.

27. The writ petitions are, thus, allowed in part. There will be no order as to costs. Government Pleader's fee Rs. 250/- in each writ petition.