

(1993) 12 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No's. 26079 to 26085 of 1990 etc.

Girish

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Excise Act, 1965 — Section 21, 21 (1)

Citation : (1994) ILR (Kar) 439 : (1994) 1 KarLJ 421

Hon'ble Judges : S.B. Majumdar, C.J.;R.V. Raveendran, J;M. Ramakrishna, J

Bench : Full Bench

Advocate : M.R. Naik, Santosh Hegde, for G.K. Bhat and Hegde Associates, P. Vishwanatha Shetty, A.M. Farooq, T.R. Subbanna, for Kaleemulla Sheriff, for the Appellant; B.V. Acharya, General and S.R. Nayak, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.Ramakrishna, J

1. These Writ Petitions have been referred to the Full Bench by the Division Bench consisting of Shivashankar Bhat and Ramakrishna, JJ., by invoking the power u/s 10(v) of the Karnataka High Court Act, 1961, by their Order dated 30.6.1992, for consideration. Hence, they have been taken up for consideration by this Full Bench.

2. The legal contention urged in support of the Writ Petitions is that the Decision rendered by a Division Bench of this Court in Rajamalliah Vs. State of Karnataka, , requires to be reconsidered in view of the subsequent pronouncement of the Supreme Court in (1) Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , (2) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, v. INDIAN OIL CORPORATION AND ORS., (3) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and observations made by another Division Bench of this Court in STATE OF

3. Learned Counsel for some of the petitioners have put forward the following propositions of law to be considered in view of the recent trend and the Judicial pronouncements after Rajamalliah's case:

(a) The State action in whatever form must be fair and reasonable. That is to say, whatever may be the nature of the State action whether it is in the nature of contractual transaction or otherwise, it must be decided in the light of Article 14 of the Constitution.

(b) Fairness is a principle inherent in Article 14 and therefore all contractual and other transactions of the Government must be tested in the light of Chapter-III of the Constitution.

(c) The Courts can interfere in an arbitrary action of the State at any stage of the contract to which the State is a party, as the principle of "waiver on estoppel" cannot prevent a person from enforcing his Fundamental Rights under Chapter-III of the Constitution.

(d) Unjust enrichment is a rule of equity. Equity is inherent in Article 14 and therefore unjust enrichment on the part of the State directly contravenes Article 14.

(e) The nature of trade of all the petitioners does not affect their rights under Chapter-III of the Constitution, and

(f) the Decision in Rajamalliah's case, is required to be distinguished having regard to the subsequent pronouncements of the Supreme Court including the latest one in Kumari Srilekha Vidyarthi's case.

4. The broad proposition underlying the arguments of the learned Counsel for the petitioners is that the power u/s 21 of the Karnataka Excise Act, 1965 (the Act for short) is merely a Police power and it cannot be so interpreted as to denude the very basis of contract and kisth or the consideration of selling the liquor must be taken into account keeping in view the nature of the contract entered into between the parties. Therefore, the petitioners are entitled to remission of kisth in proportion to the periods during which their arrack shops were closed at the instance of the State or refund of the amounts collected from them in that behalf.

5. The case of the petitioners in general arising in all these Writ Petitions as reflected from the facts narrated in W.Ps Nos.26079 of 85 of 1990 is that they are all excise contractors vending arrack at various places in the State under the leases obtained from the Government of Karnataka and they are required to pay every month the kist amount. As a typical case, the petitioners are required to pay the following amounts every month towards kist-

Kist amount per month Petitioner-1 - Hubli Taluk Rs. 12,10,000/- Petitioner-2 - Chamarajanagar Taluk Rs. 15,00,300/- Petitioner-3 - Hosadurga Taluk Rs. 11,01,000/- Petitioner-4 - Challakere Taluk Rs. 13,55,000/- Petitioner-5 - Maddur

Taluk Rs. 29,00,100/- Petitioner-6 - Mandya Taluk Rs. 40,00,100/- Petitioner-7 - Somwarpet Taluk Rs. 15,32,000/- It is stated that the rights acquired by the petitioners under the leases are the exclusive rights being regulated by the provisions of the Act and the Rules made thereunder and such rights cannot be taken away except as provided for in law.

6. The main case of all the petitioners in these Petitions is that in the months of October and November, 1990, their shops were ordered to be closed for some days as stated therein following the outbreak of communal riots by which they had to incur loss of business in arrack and that therefore they were not liable to pay kist amount during the closure of the shops at the instance of the Government.

7. It is stated in the above Writ Petitions in regard to closure of shops as follows:-

Petitioner-1. Business of vending arrack was prevented by imposition of Curfew for a period of seven days from 25.10.1990 to 1.11.1990 with intermittent break for people to procure essentials of life. Thus the lease was curtailed for 7 days by the actions of respondent-3, though no orders were passed u/s 21 of the Act. A copy of the endorsement is produced at Annexure-A.

Petitioner-2. He has a right to vend arrack in Chamarajanagar Taluk and his shops were ordered to be closed by respondent-5 by his order dated 4.11.1990 purporting to be under the provisions of the Code of Criminal Procedure for a period of 7 days from 4.11.1990 to 10.11.1990 from 6 P.M. to 10 P.M. Copies of the said orders are produced at Annexures-B, C and D. Again from 7.10.90 onwards prohibitory orders were issued whereby the Police of Chamarajanagar Taluk prevented vending liquor from retail shops despite there being no orders passed u/s 21(1) of the Act. Annexures-E, F and G are the copies of the prohibitory orders, referred to above. Thus, this petitioner was prevented from selling arrack from his retail outlets for a total period of 16 days from 7.10.1990 to 22.10.1990 under prohibitory orders and 9 days under the orders of the Taluk Magistrate, in all 25 days.

Petitioners 3 and 4. Similarly these petitioners vending arrack in Hosadurga and Challakere Taluk were prevented from vending arrack by orders u/s 21(1) of the Act for 12 days from 1.10.1990 to 13.10.1990, 23rd, 24th and 25th October, 1990, 29th and 30th October, 1990 and from 21.10.1990 to 3.11.1990. Annexure-H, J, K, L & M are the copies of orders produced along with the Petitions. It is stated that apart from the above 12 days, for intermittent periods from 4.10.1990 to 3.11.1990 shops had to be closed through the Taluks by imposition of prohibitory orders. Annexure-N is a copy of the prohibitory order.

Petitioners 5 and 6. These petitioners also were prevented from vending arrack under the orders u/s 21(1) of the Act from 23.10.1990 to 29.10.1990 and again from 29.10.1990 to 31.10.1990, in all for 9 days. Annexure-O is the copy of the notification produced along with the Petitions.

Petitioner-7. This petitioner being a Contractor of Somwarpet Taluk, Kodagu District, was likewise prevented from vending arrack in the entire District for almost over a month, the reason being that there was a rioting which took place on 6.10.1990 consequent upon Ramajanambhoomi-Babri Masjid dispute. There were rioting on 8.10.1990 and therefore all the liquor shops in Somawarpet Taluk were closed by orders of the Police authorities though written orders were not issued. It is stated that though the petitioner demanded for an endorsement to that effect, there was no reply whatever. Annexure-P is a copy of the letter by the petitioner for an endorsement. By an order dated 23.10.1990 purporting to be u/s 21 of the Act, all the shops were ordered to be closed for an indefinite period and the same was withdrawn only on 6.11.1990 to be effective for 12 hours from 7.11.1990. Copies of the said orders are produced at Annexure-Q and R. Thus there had been orders of closure u/s 21(1) of the Act for a period of 16 days and by the police authorities for 15 days from 8.10.1990 to 23.10.1990 thereby virtually not allowing to vend liquor for nearly a month.

8. Almost similar is the case in the other Writ Petitions.

9. Depending upon the facts, the case of the petitioners is that by several orders, both oral and in writing, issued in the guise of maintaining law and order or preventive measure, all the liquor shops for nearly a month had to be closed thereby practically there were no sales of arrack at all for the said periods. It is stated that the petitioners are required to sell arrack in sealed bottles supplied to them on permits issued by the Excise Department by various agents. Sometimes, though indent was made proportionate to the requirement, there was short supply, e.g., petitioner in W.P.No.26081 of 1990 could indent and sell only 650 litres of arrack in October, 1990 as against 20,000 litres required to be sold. The business done with the short supply was only to meet bare costs of arrack and kist payable. It is stated that for no fault of the petitioners, their right to sell arrack guaranteed under the leases was denied thereby making them incur heavy loss in the business. Therefore, they had to seek remissions in payment of kist for the period of closures of shop or in which the business was minimised. Without considering their case effectively, the authorities arbitrarily and unreasonably rejected the prayer for remission on the ground that the Rules did not provide for it. Besides, they were directed to pay the kist amount as required by the leases. Some of the petitioners have been informed by the authorities concerned that if they do not pay the kist amount under the leases for the month of October, 1990, immediate action would be taken to determine the leases and right to vend arrack will be reconsidered in accordance with law at the risk of the petitioners. This is by means of Circular instruction issued as per Annexure-Z. According to the petitioners, it is an arbitrary action u/s 21 of the Act though such power is required to be used sparingly that too under absolute compulsion. Thus, the grievance of the petitioners is that their prayer for remission of the kist for the period of closures of their shops by the authorities was rejected arbitrarily and illegally and they were called upon to pay the said amount according to the leases.

10. Certain specific grounds have been taken in support of their prayer for declaration that the provisions of Section 21(1) of the Act are ultra vires the Constitution and for a direction to give pro-rata deductions in payment of kist for the period of closure of shops. One of them is that the Decision rendered by this Court in Rajamallaiiah's case that the contractors were not entitled to pro-rata deductions in the absence of the provisions of law, is required to be reconsidered in view of the subsequent Judicial pronouncements of both the Supreme Court and this Court in the cases stated above in particular of Kumari Srilekha Vidyarthi.

11. The common prayer of the petitioners in all these Petitions is -

(i) for a declaration that the demand made by the State of Karnataka for payment of kist amount during the periods of closure of shops is illegal and without jurisdiction and that Section 21(1) of the Act is unconstitutional and unenforceable; and

(ii) for a direction not to collect the kist amount or rentals for the periods of closure of shops mentioned in the petitions.

12. They have also sought for interim reliefs in terms of the above reliefs.

13. Indeed, there has been an Interim Order made by the learned single Judge in favour of the petitioners, pending disposal of these Petitions. Therefore, no action was taken to terminate the leases on the grounds of non-payment of kist amount or rentals, during the pendency of these Petitions.

14. As against the legal contention advanced for the petitioners, the learned Advocate General appearing for the State argued that the petitioners have no case, inasmuch as the Decision in Rajamallaiiah's case¹ remains undisturbed and it is still holding the field. Substantiating his contentions, he argued that Section 21(1) intends to regulate and maintain public order and peace. It also intends to preserve revenue payable to the State under the leases and to safeguard the interests of the State Government at the time of rioting, communal disturbances and unforeseen circumstances affecting normal business of the State or any part of it. He submitted that Section 21 of the Act as well as the consolidated instruction issued by the Election Commission of India in connection with the elections are required to be followed by the States. The State has no option but to comply with the instructions issued from time to time by the Chief Election Commissioner. He further submitted that even though the Supreme Court had occasion to pronounce upon different dimensions of Article 14 of the Constitution having regard to the facts and circumstances of each case, its subsequent pronouncements do not in any way change the Ruling in Rajamallaiiah's case¹.

15. He further submitted that there is no proper pleading in each of the Writ Petitions giving rise to specific points of law to be considered by this Court. In other words, his submission is that the pleading is incomplete. The last submission of the learned Advocate General is that the Constitutional validity of Section 21 of the Act having been upheld by a Division Bench of this Court and

the Special Leave Petitions filed before the Supreme Court against the said Decision having been withdrawn, the petitioners cannot once again reopen the issue in these Petitions.

16. Among several learned Counsel appearing for the petitioners urging their points in support of their Petitions, Sri Santosh Hegde, learned Senior Counsel, specifically argued the following points:-

(i) The law declared in *Srilekha Vidyarthi's* case by the Supreme Court considering different dimensions of Article 14 of the Constitution is in favour of the petitioners. Therefore, in view of the said Ruling, the Decision of this Court in *Rajamalliah's* case is no longer a good law. During the course of arguments, he drew our attention to certain observations made by the Supreme Court in *State of Rajasthan and Others Vs. Nandlal and Others*, in which the Bench of three Judges while laying down the law interpreting the provisions of the Rajasthan Excise Act, 1950 with reference to Article 14 of the Constitution, held as follows:-

"As the State is the only source of supply of country liquor to the licensees, it cannot be said that the liability of the licensees to pay the agreed amount would remain affected even if there is a total failure on the part of the State in supplying the liquor. Unless the State supplies them the liquor they cannot carry on their business. It is essentially a commercial contract, though governed by statutory provisions. The obligation to supply constitutes the basis of the contract. This does not, however, mean that the State is bound to supply as much as is demanded or that its failure to supply on a given day or in a given week can be termed as failure to supply. Supplies of liquor are normally effected through warehouses and depots maintained by or on behalf of the State. Supplies have to be drawn over the month. It cannot be insisted that the entire monthly quantity or any other quantity must be supplied at once or as and when demanded by a licensee. All that can be said is that all licensees must be treated in a fair and equal manner in the matter of supplies, particularly during the lean periods. Due regard must also be had to the rules, conditions of licence and agreement and other provisions applicable in that behalf, in determining whether there was a failure on the part of the State to supply." (Please see paragraph-19).

Referring to Article 14, the Supreme Court in above Case observed that the licensees are entitled to be treated in a fair and equal manner.

17. Similarly, drawing our attention to another Decision of the Supreme Court in *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, , Sri Hegde placed reliance upon the observations made therein. The Supreme Court referring to the State actions arising out of contracts, while interpreting the doctrine of legitimate expectation, held as follows:-

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to

the reasonable or legitimate expectations of the persons likely to be affected by the decision. Whether the expectation of the claimant is reasonable or legitimate is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny." (Please see paragraphs 7 and 8).

18. The sheet anchor of the arguments advanced by most of the learned Advocates including Sri Hegde is the Ruling of the Supreme Court in Kumari Srilekha Vidyarthi's case. We will presently refer to the Ruling in the said Case.

19. That was a Case where the Allahabad High Court upheld the decision of the State Government to terminate the engagement of all the Government Counsel engaged throughout the State of UP. for civil-revenue/criminal (including anti-dacoity) and urban ceiling work on and from 28.2.1990 and to make appointments in their place on the basis of new panel prepared for the purpose and it was communicated to all the District Magistrates in the State. Admittedly, the Circular containing the above decision of the State Government was made applicable to all the Government Counsel throughout the State at the district level, however designated such as District Government Counsel, Additional District Government Counsel, etc. There was no dispute that the Circular related to and applied equally to all the Government Counsel throughout the State irrespective of their tenure whose appointments were terminated w.e.f. 28.2.1990 for being replaced by new appointees. The Circular applied equally to not only those Government Counsel whose tenure had already expired or whose tenure was to expire before 28.2.1990, but also to those whose tenure, as a result of their earlier appointment was to extend beyond 28.2.1990, as well as those who were entitled to be considered for renewal of the tenure on expiry of their earlier tenure. The challenge in those matters was not only by some individuals who were adversely affected by the said Circular but also by Association of District Government Counsel. Since the impact of the Circular was on all Government Counsel engaged at the district level throughout the State, the challenge was really in a representative capacity on behalf of all of them and this was how the challenge had been met on behalf of the State of UP. in reply. Thus it was a common ground that the decision of those matters would govern the appointment of all Government Counsel through the State of UP., at the district level, in all branches, irrespective of the name or designation given to the appointment such as District Government Counsel, Additional District Government Counsel etc.

20. The Decision of the Allahabad High Court upholding the decision in the Circular in question, was challenged in Appeal before the Supreme Court, which having regard to the facts and the circumstances of the case and due regard

being had to the Legal Rememberancer's Manual, 1975 Ed., Chap.I, Para 7.06 and referring to the en bloc removal of all the Government Counsel in the State of Uttar Pradesh, the State actions in that behalf arising out of contracts and Article 14 of the Constitution, observed in paras 20, 28 and 34 as follows:-

"Even apart from the premise that the "office" or "post" of D.G.C.S. has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14 this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Exclusion of Article 14 in contractual matters is not permissible in constitutional scheme. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, it can be said that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. Therefore, it would be difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14. Thus the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have."

21. Highlighting the scope and ambit of the Ruling in *Srilekha Vidyarthi's* case, Sri Hegde and other learned Counsel who adopted his arguments, urged that in view of the interpretation of Article 14 by the Supreme Court and the Decision therein by which the State actions taken through the Circular in question was found fault with and the Decision of the Allahabad High Court was reversed, the Decision rendered by this Court in *Rajamalliah's* case is no longer a good law.

22. In view of the foregoing, the following Points arise for our Consideration in these Petitions:-

(1) Whether the Decision rendered by a Division Bench of this Court in *Rajamalliah's* case is no longer a good law, in view of the subsequent judicial pronouncements of the Supreme Court.

(2) On consideration of the Decision in *Rajamalliah's* case in the light of several

subsequent judicial pronouncements of the Supreme Court including the one in Srilekha Vidyarthi's case, are the petitioners entitled to the reliefs sought for by them?

23. Our answer is emphatic "no" for the reasons stated herein afterwards.

24. With a view to understanding the correct position of law on the arguments of the learned Counsel, it is better to refer to Section 21 of the Act, which reads :

"21. Closing of Shops for the preservation of public peace etc. (1) The District Magistrate may, by notice in writing to the licensee require that any shops in which any intoxicant is sold shall be closed at such times and for such period as he may think necessary for the preservation of the public peace or the prevention of the spreading of any infectious diseases.

(2) If any riot or any unlawful assembly is apprehended or occurs in the vicinity of any such shop, any magistrate or any Police officer not below the rank of a Sub-Inspector, who is present, may require such shop to be kept closed for such period as he may think necessary:

Provided that where a riot or unlawful assembly so occurs, the licensee shall in the absence of such Magistrate or officer, close the shop without any order and keep it closed during the continuance of such riot or unlawful assembly."

25. It may be necessary to point out that in Rajamallaiiah's case similar contentions as are taken in these Cases were taken in support of their case. Dealing with the said contentions with reference to the facts and circumstances obtained in that case and the provisions of law in particular Section 21 of the Act and Article 14 of the Constitution applicable to them, their Lordships held in paras 48, 50 and 51 as follows:-

"The new dimension of Article 14 of the Constitution has no application to contracts and more so to the reasonableness of a term of a contract. The whole period for which the contracts were entered into have been found to be beneficial to both the parties and their performance or non-performance for the remaining periods did not depend on the compulsory closures, in a few cases for longer periods and in other for very short periods, that too in respect of some shops only. After all the reasonableness of a contract or the term of a contract cannot be adjudged only with reference to an event that occurs for a day or for longer periods.... When every one of the appellants did business for the entire period, it could be presumed that the compulsory closure for some periods or on some days was not destructive of their business and did not completely cripple their business even to remotely attract Section 56 of the Contract Act. Hence the term of the contract providing for payment of shop rentals for days of closure is not arbitrary and unreasonable."

26. It may be mentioned here that the Decision rendered in Rajamallaiiah's case arose out of Appeals against the Judgment of the learned Single Judge in W.P.No. 18155 of 1980 and connected cases which was also reported in Anjanappa and

Co. Vs. State of Karnataka, Upholding the view taken by the learned single Judge, the Division Bench in Rajamalliah's case dismissed the Appeals. While doing so, the Division Bench having regard to the scope and object of Section 21 of the Act, Constitutional validity of which was an issue before the Court, held in paragraphs 25 and 26 as follows:-

"Section 21 of the Act empowers the authorities specified therein to direct compulsory closure of shops for the preservation of public peace and order in the area. The purposes set out in the provision which are conceived in the public interest in compelling and unavoidable circumstances cannot be taken exception to by this Court on any constitutional or legal principle. Without any doubt Section 21 of the Act cannot be invalidated by this Court on any principle. The circumstances and the satisfaction of the authority u/s 21 of the Act, except when vitiated by malafides, cannot be examined by this Court as if it is an appeal and a different conclusion reached on the necessity or otherwise of the orders made by the authorities. We are satisfied that every one of the notifications were for purposes of Section 21 of the Act and not suffer from any infirmity."

26. Referring to the rights and liabilities of the lessees (the petitioners) arising out of the leases and the conditions incorporated therein vis-a-vis the scope and the object of Section 21 of the Act, the Division Bench held as follows:

"23. On the claim of the appellants for pro rata remissions, the learned Judge on an analysis of the nature of the trade and business, the provisions of the Act, the terms of the contract, and the law bearing on all of them as expounded by the Supreme Court in various rulings, has negatived the same. In negating the same, the learned Judge has inter alia observed thus:

Unforeseen event which prevented vend of liquor will not alter the character of price paid/agreed to be paid for purchase of privilege. The petitioners have stipulated to pay lumpsum amounts as the price for exclusive privilege for vend of liquor. The amount agreed to be paid is considered as the value of that right and will not depend upon loss or profit. Licensee can enjoy the privilege so long as the conditions and restrictions imposed are complied with.

Terms of contract indicate that they were aware of such eventualities. Persons who entered into a contract with eyes wide open must accept the burden of the contract along with its benefits. The dictum of Lord Atkinson in *MATTHEY v. CURLING* 1922 AC 180 at 234(M) which reads thus:

"a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the act of God or King's enemies... or "vis major"...."

has been approved by the Supreme Court in *SATYABRAT v. MUGNEERAM* reported in 1954 SC 44."

After holding that the contract was one and indivisible which we have set out earlier and in continuation of that very finding, the learned Judge proceeded to

observe thus:

"They are not entitled to claim pro rata deduction. If accepted Court may have to embark upon to modify the term of the contract as well as provision providing for grant of privileges which is impermissible. Petitioners cannot be permitted to import into the contract a stipulation to the effect that their liability ceases if vend of liquor is prevented on account of unforeseen events. It is well settled that, where there is a positive contract to do a thing, the Contractor must perform it or pay damages although in consequence of unforeseen events, the performance of contract has become unexpectedly burdensome or even impossible.

27. Thus the Division Bench upholding the view of the learned single Judge on the specific conditions imposed in the contract and with a view to maintaining public peace and order as envisages in Section 21 of the Act, rejected the contentions of the appellants. The facts and circumstances obtained in these batch of Writ Petitions are more or less similar to those in Rajamalliah's case. It is not in dispute that the amounts mentioned in the course of the Writ Petitions are the kist or rental amounts payable per month as per the conditions of lease by the petitioners to vend arrack in the respective areas. With a view to appreciating the contention now raised before us, let us now look at the conditions incorporated in the leases executed by both the parties. A model lease copy is produced before us. It is dated 10.5.1991. Condition 17 of the lease reads :

"17(a) The Deputy Commissioner or the Excise Commissioner may either on the application of a licensee or otherwise and for the reasons to be recorded in writing direct the closure or shifting of the shop from one place to another and the licensee shall not be entitled to any compensation on account of such closure or shifting.

(b) Whenever any shop is closed by virtue of any order passed by the authority mentioned in Section 21 of the Karnataka Excise Act, 1965, for any period, the licensee shall not be entitled to any compensation on account of such closure."

28. Clause (a) of Condition 17 deals with the power of Deputy, Commissioner or the Excise Commissioner either on the application of a licensee or otherwise and for the reasons to be recorded in writing to direct closure or shifting of the shop from one place to another. This however does not spell out that such orders are being passed in exercise of the powers u/s 21 of the Act. If there is a need to close or shift a shop from one place to another in the interest of public or otherwise, the authority can pass an order not being u/s 21 of the Act directing closure or shifting a shop from one place to another and the licensee shall not be entitled to any compensation for such closure or shifting. We are concerned with Condition 17(b) which states that for closure of any shop by virtue of any order passed u/s 21 of the Act, the licensee shall not be entitled to any compensation. Therefore, it is clear that the licensees are very much aware of such eventualities

even at the time of entering into contracts and it is not as though they were unaware of such incidents. Therefore, the lessees who entered into a contract with eyes wide open must accept the burden of the contract along with its benefits.

29. As the Division Bench has observed in Rajamalliah's case, when there are certain unforeseen events such as rioting, communal disturbances etc., affecting public order or causing danger to society, the authority mentioned in Section 21 of the Act can pass an order directing closure of all the shops in the affected area for such period as the authority may specify or till the disturbances come to an end and the licensees shall not be entitled to compensation for such closure of shops, as specified in condition 17(b). Therefore, it is not open to the petitioners to say that they have suffered loss of business on account of the closure of the shops. Thus is one aspect of the matter in relation to giving effect to the object of Section 21 of the Act. But there is another aspect which we have got to notice in this behalf.

30. The Election Commission of India in its letter .No.576/14/84 dated 9th November, 1984 contained in the book "Consolidated Instructions" of the Election Commission of India in connection with conduct of elections and addressed to all Chief Secretaries/Chief Electoral Officers of States/Union Territories regarding declaration of "dry day - Prohibition of sale of liquor on polling day(s) during General/Bye-elections" made recommendations and suggestions in paragraph-3 as follows:-

"Accordingly, the Commission recommends that in all future General Elections and Bye-elections from territorial constituencies, "dry days" should be declared in each constituency on the day of the poll and on two days immediately preceding the day of the poll. It is also suggested that in order to make this practice uniform, a suitable provision may be included in all Abkari contracts in future, if not already done. The storage of liquor by individuals should also be drastically reduced during the above period and the restrictions provided in the Excise Law on the storage of liquor in unlicensed premises should be vigorously enforced."

These instructions have been issued having regard to the powers under Article 324 of the Constitution,

31. In light of the said instructions of the Chief Election Commissioner, the State of Karnataka also issued subsequently a Circular No. EXE.SO. 5/79-80 dated 5.6.1989. One of the conditions imposed in the said Circular is that in case of elections it may be just and proper to close the shops on the day of the poll and occasionally it may be necessary in very exceptional cases to close the shops on the day of counting/announcing the results. It further added that but while doing so, one must also keep in view the question of public revenues and shops should not be shut down on the mere apprehension of any disturbances. The situation should be weighed carefully and shops should be closed" only when the District

Magistrate objectively arrives at the finding that public peace Will be jeopardised without the closure of shops. But pre-poll and post-counting closures must be done carefully and with the Utmost discretion. Thus the State will have to obey the Instructions issued by the Chief Election Commissioner from time to time. As disclosed in some of these Writ Petitions, on account of the assassination of Sri Rajiv Gandhi, former Prima Minister, rioting erupted affecting public order even in several pockets of the State of Karnataka and with a view to maintaining public peace and order, the authorities named in Section 21 of the Act issued instructions from time to time to close the shops for a particular period. This action on the part of the authorities cannot be said to be arbitrary or whimsical, but as measure of compulsion they had to take action to close the shops. However, the question is whether the petitioners are entitled to pro rata deductions of the kist or rentals for periods of closure of shops.

32. The legal contention of Sri Santosh Hegde consists of three limbs of arguments. The first limb of argument is (i) a contract with the State is on a different footing when compared to the general contracts, (ii) the challenge on the ground of arbitrariness with reference to Article 14 is required to be considered in view of the latest Rulings of the Supreme Court in particular the Ruling in Srilekha Vidyarthi's case and (iii) one of the basic dimensions of Article 14 is fairplay in the State action.

33. While advancing the first limb of arguments, to drive home the point, learned Counsel argued that the reasonableness of the restrictions imposed under Article 14 has to be applied to a contract to which the State is a party and therefore such a contract stands on a different footing altogether. Therefore, his submission is that the reasonableness of the condition imposed under Article 14 will have to be tested on the touch-stone of Article 14 in the light of the pronouncement of the Supreme Court in Srilekha Vidyarthi's case. Thus he has drawn our attention to the observations made by the Supreme Court in that Judgment. The Bench of two Judges in Kumari Srilkeha Vidyarthi's case considering the decision of the Uttar Pradesh Government removing en bloc all the District Government Counsel in the State found the action arbitrary. While doing so, the Supreme Court held that the Office or post of District Government Counsel is a post having public element involved in it and therefore held:

"The expression "professional engagement" is used therein to distinguish it from "appointment to a post under the Government" in the strict sense. This, however, does not necessarily mean that a person who is not a Government servant holding a post under the Government does not hold any public office and the engagement is purely private with no public element attaching to it."

On the other hand, the Court held that it does not mean that the appointment is at the sweet will of the Government which can be terminated at any time even without existence of the cogent reasons during the subsistence of the term. In the case of Public Prosecutors, the additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly, invest the

Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it. In paragraphs 13, 14 and 17 of the Judgment, their Lordships have discussed in detail the pros and cons of such an action of the State terminating en block all the District Government Counsel without there being any cogent reasons therefor. Therefore, the Court found fault with such an action of the State of U.P., applying the test of Article 14.

34. Dealing with the application of Article 14 to such an action of the State, in paragraphs 20, 21, 28 and 34, the Court held:

".....The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the preamble. Exclusion of Article 14 in contractual matters is not permissible in constitutional scheme. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, it can be said that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters.

35. In view of the above observations found in *Srilekha Vidyarthi's* case, Sri Hegde argued that the view taken by the Division Bench in *Rajamalliah's* case interpreting Article 14 against the appellants therein, is no longer a good law. It is not possible to concede to this submission of Sri Hegde.

36. At the outset, it is seen that the interpretation of Article 14 of the Constitution right from the Decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, , to that in *Dwarkadas Marfatia and sons*, is against the petitioners, inasmuch as Article 14 can be pressed into service to test the validity of the contractual rights and obligations especially in a case where the State is a party only at the initial stage and not thereafter.

37. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Supreme Court referring to the terms of a contract and the rights and liabilities arising therefrom held:

".... The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance." (Please see paragraph-20)

In paragraph-21 the Supreme Court declared the law as follows:-

"This rule also flows from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non discriminatory; it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*,

38. Thus the Rule of Law laid down by the Supreme Court in *Ramana's* case is that the State cannot therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. Thus Article 14 can be pressed into service only at the initial stage of a contract and not thereafter in which the State is a party.

39. Again the Supreme Court had the occasion to deal with the similar question in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, In that Judgment the Supreme Court referring to plethora of Decisions right from the Decision in *Ramana's* case supra to that in *Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala*, laid down the law as follows:-

"Where there is arbitrariness in State action Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14. (Please see paragraph-25)."

In paragraph-28, it was concluded thus:

"..... It is for the party challenging its validity to show that the action is unreasonable, arbitrary or contrary to the professed norms or not informed by public interest, and the burden is a heavy one."

40. In paragraph-23, referring to the real question which arose in that Decision, the Supreme Court held as follows:-

"The contractual privileges are made immune from the protection of the Rent Act for the reasons because of the public position occupied by the respondent

authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where a special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible."

41. Thus the Supreme Court reiterated the Ruling in Ramana's case interpreting Article 14 in so far as the rights and obligations arising out of a contract involving public element, were concerned.

42. Dealing with the second limb of argument of Sri Hegde that if there is any arbitrariness in the grant of privilege by the State action, the same can be challenged with reference to Article 14 etc., we can directly refer to the Decision of the Supreme Court in Nashirwar and Others Vs. State of Madhya Pradesh and Others, similar to the one in the instant case. In that Decision, The Supreme Court held that a citizen has no fundamental right to do business in liquor and that therefore Article 19(1)(g) of the Constitution as it stood as on that day was not applicable to the rights arising out of a contract dealing in liquor,

43. Later in the STATE OF MP v. NANDALAL AND ORS., the Supreme Court dealing with the provisions of M.P. Excise Act held in paragraphs-32 and 33 as follows:-

"There is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolute every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to other the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article. But, while considering the applicability of Article 14 in such a case, the Court 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 has done, unless it appears to be plainly arbitrary, irrational or malafide."

44. Thus the challenge made by the petitioners in State of M.P. and Others Vs. Nandlal Jaiswal and Others, in respect of the provisions of Section 62(2)(h) of the M.P. Excise Act was held against them. In paragraph-33, the Court further held;

"What can be said in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. Court must not forget that in complex economic matters every decision is necessarily empiric ? and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any strait-jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play" in the joints to the executive."

45. In P.N. Kaushal and Others Vs. Union of India (UOI) and Others, dealing with the similar question arising out of the Punjab Liquor Licence Rules, 1956, the Supreme Court held in paragraph-43 as follows;-

"An important undertaking by the State. - We must here record an undertaking by the Punjab Government and eliminate a possible confusion. The amended rule partially prohibits liquor sales in the sense that on Tuesdays and Fridays no hotel, restaurant or other institution covered by it shall trade in liquor. But this prohibition is made non-applicable to like institutions run by the Government or its agencies. We, prima facie, felt that this was discriminatory on its face. Further, Article 47 charges the State with promotion of prohibition as a fundamental policy and it is indefensible for Government to enforce prohibitionist restraints on others and itself practice the opposite and betray the constitutional mandate. It suggests dubious dealing by State power. Such hollow homage to Article 47 and the Father of the Nation gives diminishing credibility mileage in a democratic polity."

46, In paragraph 45 and 46, the Court further held as follows:-

In short, Tuesdays and Fridays, so long as this rule remains (as modified in the light of the undertaking) shall be a holiday for the liquor trade in the private or public sector throughout the State, We need hardly state that if Government goes back on this altered law the consequences may be plural and unpleasant. Of course, we do not expect, in the least, that any such apprehension will actualise.

One confusion that we want to clear up is that even if Section 59 and Rule 37 were upheld in toto that does not preclude any affected party from challenging a particular executive act pursuant thereto on the ground that such an act is arbitrary, mala fide or unrelated to the purposes and the guidelines available in the Statute. If, for instance, the Financial Commissioner or the Excise Commissioner, as the case may be declares that all liquor shops shall be opened

on his birthday or shall remain closed on his friend's death anniversary, whatever our pronouncement on the vires of the impugned provisions, the executive order will be sentenced to death. The law may be good, the act may be corrupt and then it cannot be saved."

47. In paragraph-65 of the Judgment, providing guidelines on consideration of the challenge to Section 59(f)(v) of the Punjab Excise Act, the Court held;

"Now that we have held that the provision [Section 56(f)(v)] is valid on a consideration of the criteria controlling the wide words used therein there is a minor matter remaining to be disposed of. The extract from the Section, as will be noticed, contains a clause which runs: "and the closure of such premises on special occasions." Thus, rules may be made by the Financial Commissioner for fixing the closure of licensed premises on "special occasions".

48. In the same paragraph, the Court further observed:

"The occasion must be special from the point of view of the broad considerations of national solemnity, public order, homage to national figures, the likelihood of eruption of inebriate violence on certain days on account of melas, festivals or frenzied situations or periods of tension. Bapuji's birthday, election day, hours of procession by rival communities when tensions prevail or festivals where colossal numbers of people gather and outbreak of violence is on the agenda, are clear illustrations."

49. Thus the Supreme Court not only upheld the provisions of Section 59(f)(v) of the Punjab Excise Act but also endorsed the action taken by the State in regard to prohibition of liquor on certain days on certain occasions. Indeed, this Decision has been followed in Raj amallaiah's case.

50. Referring to the specific observations made in P.N.Kaushal's case, the Division Bench in Rajamalliah's case¹ dealing with the very question held in paragraphs 48, 50 and 51 which we have extracted in this Judgment at paragraph-25.

51. Therefore, in the light of the foregoing it is not possible to accept the arguments of Sri Hegde on the second limb,

52. The third limb of arguments of Sri Hegde that one of the basic determinations of Article 14 is fairplay in State actions etc., has to be noticed only to be rejected, for it is not possible for this Court to hold that there was no fairplay in the State action directing closure of shops for the reasons stated in the relative orders and Notifications annexed to the Writ Petitions. The authorities named in Section 21 of the Act have indeed applied their mind to the facts and circumstances compelling them to direct closure of shops on occasions like "Bharat Bundh" in the wake of assassination of Rajiv Gandhi and subsequent sporadic incidents like rioting and communal clashes with a view to maintaining law and order thereby preventing damages to both life and property of private persons as well as public. Therefore, the inevitable action taken by the State to

close arrack shops throughout the State for a short period cannot be found fault with. These matters have been discussed in detail in Rajamallaiiah's case and the reasons assigned therein by the Court upholding the State action have to be reiterated by us. In that view of the matter, the contentions urged by Sri Hegde do not merit for acceptance.

53. As to the contention of the learned Counsel for the petitioners that in the light of the subsequent pronouncements of the Supreme Court particularly Srilekha Vidyarthi's case, the view taken by the Division Bench of this Court in Raj amallaiiah's case is required to be reconsidered etc., we are clearly of the opinion that there is no case made out by the petitioners because by a careful consideration of the Ruling in Srilekha Vidyarthi's case certain observations of which have been extracted above, it is seen that that was a peculiar case where the State of UP. had taken action to remove en bloc all the Government District Counsel in the State which was found to be arbitrary by the Court having applied the test of Article 14. The facts and the circumstances found in that Case are entirely different from those in these Cases. Therefore, we are in respectful agreement with the view taken in Rajamallaiiah's case.

54. From paragraphs 6 to 11 of the Decision in Srilekha Vidyarthi's case, their Lordships of the Supreme Court having referred to the provisions in Legal Rememberancer's Manual, 1975 Ed. Chap.I Para 7.06 referable to the Circular Instructions issued by the U.P.Government for en bloc removal of all the District Government Counsel observed in paragraph-12 in regard to rights of the persons appointed under the said Manual as follows:-

"The aforesaid provisions in Chapter VII relating to appointment and conditions of engagement of District Government Counsel show that the appointments are to be made and ordinarily renewed on objective assessment of suitability of the person based on the opinion of the District Officer and the District Judge; and character roll is maintained for keeping a record of the suitability of the appointee to enable an objective assessment for the purpose of his continuance as a Law Officer in the district. There are provisions to bar private practice and participation in political activity by D.G.Cs. Apart from CI.3 of para 7.06 to which we shall advert a little later, these provisions clearly indicate that the appointment and engagement of District Government Counsel is not the same as that by a private litigant of his counsel and there is obviously an element of continuity of the appointment unless the appointee is found to be unsuitable either by his own work, conduct or age or in comparison to any more suitable candidate available at the place of appointment. Suitability of the appointee being the prime criterion for any such appointment, it is obvious that appointment of the best amongst those available, is the object sought to be achieved by these provisions, which, even otherwise, should be the paramount consideration in discharge of this governmental function aimed at promoting public interest. All Govt. Counsel are paid remuneration out of the public exchequer and there is a clear public element attaching to the "Office" or "post".

(emphasis is supplied).

55. In view of the important and clear public element attached to the "Office" or "Post" of the District Government Counsel referable to the Manual, such persons were held to be on par with the persons holding the public office or post under the statute. Indeed, in paragraph-14 their Lordships have referred to the provisions of Section 24 of the Code of Criminal Procedure, 1973 relating to the appointment of Public Prosecutors or Additional or Assistant Public Prosecutors. They held in the course of the said paragraph:

"There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly, invest the Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it."

(emphasis is supplied)

56. Thus, the peculiar facts arising out of the Case in Kumari Srilekha Vidyarthi are certainly distinguishable from the facts arising out of these Cases, inasmuch as it is nobody's case that the petitioners before us are holding any public "post" or "Office" muchless their rights are governed under the statute like Legal Rernemberancer's Manual. On the other hand, their rights and liabilities are governed purely by the provisions of the Karnataka Excise Act and the conditions incorporated in the leases. In other words, they being lessees by virtue of the lease agreements executed by them, their rights and liabilities are governed purely under the said leasehold rights. Thus, their rights and liabilities can be distinguished from the rights and interests of the persons appointed as District Government Counsel and Public Prosecutors referable to the case of Srilekha Vidyarthi. This is one aspect.

57. Another aspect which we have got to refer with a view to distinguish the law laid down in Srilekha Vidyarthi's case is that a Bench of three Judges in Ramana's case referring to plethora of Decisions including E.P. Royappa Vs. State of Tamil Nadu and Another, , Maneka Gandhi v. Union of India and Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, and the scope of Article 14 of the Constitution to find out what are the parameters of statutory or executive power of the State in the matter of awarding a contract held in paragraph 34 as follows:-

"It is, therefore, obvious that both having regard to the constitutional mandate of Article 12 as also the judicially evolved rule of administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondent, but was bound to conform to the standard or norm laid down in paragraph-1 of the notice inviting tenders which required that only a person

running a registered IInd Class hotel or restaurant and having at least 5 years" experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the 1st respondent was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd class restaurant should be awarded was laid down, the 1st respondent was not entitled to depart from it and to award the contract to the 4th respondent who did not satisfy the condition of eligibility prescribed by the standard or norm. If there was no acceptable tender from a person who satisfied the condition of eligibility, the 1st respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondent."

58. The Ruling found in Ramana's case clearly disclosed that the action in accepting tender of the 4th respondent by International Airport Authority of India being one of the instrumentalities of the State was found to be arbitrary and affecting Article 14 of the Constitution. It was therefore held that such acceptance of the contract arising out of the tender must be struck down. But the Ruling in Ramana's case, did not arise out of any condition of the contract. On the other hand, it confined to initial stage of a contract. Secondly, the facts arising out of Ramana's case are entirely different from those in the instant cases. Although the Ruling in Ramana's case has been referred to in the course of the Decision in Srilekha Vidyarthi's case, their Lordships have nowhere found fault with that conclusion found in paragraph-34 of Ramana's case. Indeed, the Ruling in Ramana's case came to be applied even thereafter in a number of other Cases and followed.

59. Their Lordships in Srilekha Vidyarthi's case also made a reference to the Ruling of the Supreme Court in M/s Dwarkadas Marfatia's case. Again the Ruling in Dwarakadas's case came to be laid down while dealing with Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 where in paragraph-25 it has been held:

"Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of - the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14."

60. Their Lordships in Srilekha Vidyarthi's case applied the aforesaid Decision in support of their Ruling. But again, to distinguish on facts, we may state that the question of law arising in M/s Dwarakadas Marfatia's case is entirely different from the question of law arising in the present Cases, inasmuch as here we are not called upon to decide the activity of the public authority in the background of the assumption on which such authority enjoys immunity from the rigours of the

Rent Act, which is entirely different from the rights and liabilities arising out of a lease deed culminating in a contract. Therefore, in that view of the matter, the Ruling is distinguishable from the facts of these Cases. The Ruling of the Supreme Court in Ramana's case relating to the relationship between the State and a Contractor arising out of a contract culminating in contractual rights, the action of the State must conform to some standard or norm which is rational and not discriminatory. That principle laid down in Ramana's case is still holding the field. If we apply the said principle to the present Cases, we are afraid that no case is made out by the petitioners seeking to strike down the impugned action of the State Government arising out of the enforcement of Section 21 of the Act on the ground of arbitrariness so as to attract the provisions of Article 14 of the Constitution. In other words, the Ruling in Srilekha Vidyarthi's case is of no assistance to the Case of the petitioners. Therefore, there is no merit in these Petitions.

61. The following point has been raised at the end of the arguments as substantial Point in some of the Writ Petitions: On account of the closure of the shops, they incurred loss in business. REST DELETED BY ORDER DATED 12.1.1994.

62. DELETED BY ORDER DATED 12.1.1994

63. So far as this grievance is concerned, in view of our aforesaid Decision there would be no occasion for the petitioners to make such grievance either in the Writ Petition under Article 226 of the Constitution or even otherwise in a Civil Suit because they will be bound by the statutory Rules and Regulations governing grant of arrack contracts, and this will of course not preclude the State Government, if so advised and if it thinks fit, to give appropriate relief to the concerned contractors.

64. In view of the foregoing, we do not see any merit in these Writ Petitions. They are therefore dismissed. No costs.

REST DELETED BY ORDER DATED 12.1.1994