
(2014) 03 JH CK 0060

In the Jharkhand High Court

Case No : W.P. (C) Nos. 453-466, 517, 519, 1118, 6292, 6293, 6295, 6298, 6299, 6304, 6311, 6340, 6801 of 2013 and 87 of 2010

Krishna Prasad

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 2(9), 38, 42, 57, 57(c)
Bihar and Orissa Public Demands Recovery Act, 1914 — Section 17, 17(a)
Constitution of India, 1950 — Article 14, 19(1)(g), 226
Contract Act, 1872 — Section 23
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 13(2), 13(2)(i), 9(2)

Citation : (2014) 4 AJR 14 : (2014) 2 JLJR 668

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Indrajit Sinha, N.P. Srivastava, Krishanu Roy and Suchitra Pandey, Advocate for the Appellant; Ajit Kumar and Kumar Sundaram, Advocate for the Respondent

Judgement

R. Banumathi, C.J.—In these writ petitions, the petitioners have prayed for declaring the provisions as contained in clause 13(Kha) of the various sale notifications dated 2.3.2009 and Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 made by the Government u/s 89 of the Bihar Excise Act and also for declaring Notification No. 647 dated 27.3.2009, so far as it provides that if one twelfth of the annual fee fixed for a shop is not paid by the licensee by 20th day of every month, interest at rate of 5% per day of default shall be calculated and realized, to be arbitrary, irrational, unfair, unjust, unreasonable and ultra vires the provisions of the parent Act and also violative of Article 14 of the Constitution of India. The petitioners have further prayed for quashing of the Certificate Proceedings which have been initiated against them. In exercise of power under Sections 89(1) and 89(3) of the Bihar Excise Act (adopted by the State of Jharkhand), the rules providing for

settlement of licence for retail sale of liquor, namely, the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009, was framed by the State Government and published in the Jharkhand Gazette, vide Notification No. 647 dated 27.3.2009. Rule 15 of the said Rules provides, inter alia, that if any licensee fails to pay one twelfth of the licence fees fixed for the shop by 20th of every month, interest at the rate of 5% per day shall be calculated and realized from him.

2. Pursuant to the policy decision dated 20.2.2009, the State Government issued various sale notifications dated 2.3.2009 in the State of Jharkhand including the districts of Hazaribagh, Ramgarh and Giridih by the respective District Commissioners. As required under clause 13(kha), the petitioners deposited a sum equivalent to one twelfth of the annual licence fees fixed for the shop as advance licence fee and thereafter the licence in requisite statutory Forms were issued to them by the Deputy Commissioners. The petitioners were selected for various groups of liquor shops as noted below. The details of the liquor shops for which the petitioners were selected and sale notifications and details of amount claimed in relevant certificate proceedings are as follows:--

3. According to the petitioners, due to genuine hardship faced by them, the petitioners could not pay one twelfth of the aforesaid annual licence fees on due dates in the respective months. The petitioners have been served with notices in Form 3, by which the respondents are seeking to realize the amount as noted above on account of interest amount leveled for late deposition of the monthly licence fees. Certificate proceedings have been initiated against the petitioners for realization of the said amount pursuant to the requisition of the certificates made by the Assistant Excise Commissioner in Form 2. Challenging the vires of Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 and also the conditions contained in clause 13(kha) of the sale notifications as arbitrary, unjust and unreasonable, the petitioners have filed these writ petitions. The petitioners have also challenged the certificate proceedings initiated and also prayed for quashing of the certificate proceedings initiated against them.

4. On notice, the respondents entered appearance and filed counter-affidavit contending that Rule 15 and clause 13(kha) under challenge are arising out of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 and the petitioners, being the licensees for Retail Sale of Liquor, after acceptance of the terms and conditions for grant of licence, cannot wriggle out of the contractual obligations by filing writ petitions and the Rules are not ultra vires the parent Act and the Constitution of India.

5. Since common issues arise for consideration in all the writ petitions, they have been heard together and shall stand disposed of by this common judgment.

6. Challenging the vires of Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009, and clause 13(kha) of the sale

notifications, learned counsel for the petitioners, Mr. Indrajit Sinha, inter alia, raised the following contentions:--

(i) Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 providing that if one twelfth of annual licence fee fixed for the licences is not paid by the licensee by 20th day of every month, interest at the rate of 5% per day of default shall be calculated and realized from the defaulters, is arbitrary, irrational and violative of Article 14 of the Constitution of India.

(ii) Rule 15 as made by the State respondents is in exercise of powers of delegated legislation conferred on the State Government by Section 89 of Bihar Excise Act. The penal interest at the rate of 5% per day (1825% per annum) of default is unconscionable and not in conformity with the Wednesbury Principle of reasonableness.

(iii) One twelfth of the annual licence fee could not be paid by the 20th of the same month by the writ petitioners because of the genuine hardship of the writ petitioners, the certificate proceedings have been initiated to recover interest at the rate of 5% per day, which comes to 1825% p.a., which is beyond the scope and contrary to Section 17 of the Bihar and Orissa Public Demand and Recovery Act, 1914.

7. On behalf of the State respondents, Mr. Ajit Kumar, learned Additional Advocate General, submitted that the provisions of Rule 15 of the said Rules under challenge are arising out of the policy decisions taken by the State Government as far back as in the year, 2008 and 2009 inasmuch as the provisions in question that, if a licensee fails to pay the required license fee by 20th of a particular month, then interest @ 5% per day shall be realized from him", are provided in both the policy decisions of 2008 and 2009 and therefore, by virtue of Rule 15, no new provision has been inserted in the payment plan for licence fee of alcoholic liquor and the Safe Notifications in question are nothing but contain the same provision commensurate to the policies of 2008, 2009 and Rule 15 of the said Rules and the petitioners cannot wriggle out of the contractual obligations after acceptance of the bid by filing writ applications.

8. We have carefully considered the submissions and perused the materials on record.

9. For proper appreciation of the contention of the petitioners and the State respondents, it is necessary to set out the relevant statutory provisions of the Bihar Excise Act, 1915 (as adopted by the State of Jharkhand). The Bihar Excise Act, 1915 is relating to import, export, transport, manufacture, possession and sale of certain kinds of liquor and intoxicating drugs. The term "Excise-revenue" is defined in Section 2(9) as under:--

2(9) "Excise-revenue" means revenue derived or derivable from any duty, fee, tax, payment. (other than a fine imposed by a Criminal Court) or confiscation

imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs.

10. Section 38 of Bihar Excise Act provides for fees for terms, conditions, and form of, and duration of, licences, permits and passes. Section 89 of the Bihar Excise Act, 1915 empowers the State Government to make rules for carrying out the purpose of the Act. The State Government has been delegated by the Legislature the power to make rules on the matters enumerated in sub-section (2) of Section 89, clauses (a) to (n).

11. In exercise of powers under sections 89(1) and 89(3) of the Bihar Excise Act, the Government of Jharkhand has framed rules for settlement of licence for retail sale of country liquor/spiced country liquor, vide notification No. 647 dated 27.3.2009. Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009, which is under challenge, reads as under:--

15. Payment of licence fee.--Payment of twelfth part of fixed annual licence fee for each shop shall be essentially deposited in district Treasury as an advance by 20th day of every month. When 20th day is a holiday, then fee shall be deposited on next working day. If licence fee not deposited by 20th day of the month and in case of delay, interest calculated shall be recovered at the rate of 5% per day on monthly payable licence fee.

12. Challenge to vires of Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009, and clause 13(kha) of the sale notifications.

The vires of Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 is challenged on the grounds that (i) it is ultra vires the parent Act; (ii) it suffers from excessive delegation; and (iii) it is ultra vires the Article 14 of the Constitution of India, as levy of interest at the rate of 5% per day is arbitrary and unreasonable.

13. Learned counsel for the petitioners submitted that in the absence of substantive provision in the Bihar Excise Act for levy of interest, the State Government could not have framed Rule 15 to levy interest in case of delay in payment of licence fee. The State Government could not have framed the Rule 15 providing for payment of interest at the rate of 5% per day in case of default in making payment of licence fees by 20th day of each calendar month. It was submitted that liability to levy interest can only be provided under a substantive provision of the Act. Drawing our attention to Section 38-A of the U.P. Excise Act, Section 30-A of the Rajasthan Excise Act and Section 70-A of the Tamil Nadu Prohibition Act, learned counsel for the petitioners submitted that various State enactments provided for substantive provisions for payment of penalty and in Bihar Excise Act, there is no such substantive provision on par with the provisions of other State enactments and in the absence of such a substantive provision in the Bihar Excise Act, levy of penal interest at the rate of 5% per day in case of delayed payment is ultra vires the parent Act. In support of his contention, learned counsel for the petitioners placed reliance on India Carbon

Ltd. etc. Vs. State of Assam, and M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others, .

14. Refuting the aforesaid contention, Mr. Ajit Kumar, learned Additional Advocate General, submitted that levy of penal interest at the rate of 5% per day is contained in the policy itself and the same was incorporated in the Rules. Learned counsel submitted that since difficulties were experienced in realizing the revenue and in order to ensure prompt and timely payment, the Government took a policy decision, vide resolution dated 7.5.2008, and Rule 15 is traceable to the policy decision. Learned counsel, placing reliance on the decision rendered in the case of South Eastern Coalfields Ltd. Vs. State of M.P. and Others, , submitted that in the said case, challenge to levy of interest on the holder of a mining lease on the ground that there was no substantive provision in the MMDR Act was rejected by the Hon''ble Supreme Court and in the case of India Carbon Ltd. etc. Vs. State of Assam, and M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others, have been distinguished by the Hon''ble Supreme Court.

15. The question falling for our consideration is whether subordinate legislation incorporating Rule 15 for levy of penal interest is not in conformity with Parent Act and whether it suffers from arbitrariness/unreasonableness.

16. Hon''ble Supreme Court, in the case of State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, , enumerated the principles for considering the validity of subordinate legislation and in paras. (15) and (16) held as under:--

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:--

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the

inconsistency or nonconformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

17. Keeping in view the aforesaid principles, it is appropriate to consider the nature, object and scheme of the enabling Act and the area over which power has been delegated and consider whether the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 conforms to Bihar Excise Act, 1915.

18. The Bihar Excise Act, 1915 relates to import, export, transport, manufacture, possession and sale of certain kinds of liquor and intoxicating drugs. The rights in regard to the business in intoxicants belong to the State and it is open to the State Government to part with those rights for a consideration and on conditions. It is for the State Government to take appropriate decision in order to ensure that the revenue is promptly collected and there is no default. The decision of the State Government being in the interest of prompt collection of revenue, in lieu of parting with the special privilege, the State Government is authorized in law to put conditions.

19. All writ petitioners are licensees for various groups consisting of retail shops for foreign liquor in the district of Hazaribagh and Ramgarh. The petitioners are only aggrieved due to insertion of clause 13(kha) that in case one twelfth of annual licence fees is not paid to the district Treasury by 20th of every month, interest at the rate of 5% per day be charged and paid.

20. While making settlement of licence, State only parts with its right, which is really in the nature of privilege. As per Section 38, grant of licence is subject to restrictions and conditions. It is not open to the petitioners/licensees to challenge the terms on the ground that Rule 15, which is incorporated in clause 13(kha), is not supported by substantive provisions.

21. Section 38 provides for fees for permits, conditions and form and duration of licence, permits and passes. Section 38 reads as under:--

38. Fees for terms, conditions, and form of, and duration of, licences, permits and passes.--(1) Every licence, permit or pass granted under this Act--

(a) shall be granted--

(i) on payment of such fees (if any), and

(ii) subject to such restrictions and on such conditions, and

(b) shall be in such form and contain such particulars, as the Board may direct.

(2) Every licence, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the State Government under Sections 89, clause (e).

Licence granted is subject to restrictions and conditions, as may be prescribed.

22. As per earlier policy decision of the State, sale notifications dated 2.3.2009 were issued. For settlement of licences for the retail sale of country liquor and foreign liquor, sale notifications were issued. The conditions and restrictions stipulate that it will be mandatory to deposit one twelfth of annual licence fees in the district Treasury by 20th day of every month and if licence fees is not deposited by 20th day of every month, interest, in case of delay, at rate of 5% on monthly payable licence fee shall be collected and recovered. Relevant Clauses 13(ka) and 13(kha) read as under:--

13(ka) Immediately after the settlement, the settlee shall have to deposit (1/12) one twelfth of the annual licence fee as security and one-sixth as advance licence fee. Where settlement is being done in the intervening period of the financial year, the licence fee for that months shall be payable in proportion to the number of months. Payment of these amounts will be made against the post of Assistant Commissioner of Excise/Excise Superintendent through A/C Payee Bank draft or Bankers cheque. Bank Draft or Bankers cheque will be payable at the Headquarter of the concerned district. Adjustment of deposited advance licence fee shall be made in last two months (February and March, 2010) of the financial year. Refund of the amount of security shall be made after the adjustment of dues etc. after the end of the financial year.

13(kha) Besides Para. (ka) above, it will be mandatory to deposit one twelfth of annual licence fee in the District treasury by 20th of the every month. If 20th of the month is a public holiday, the amount of licence fee shall be deposited on the following working day of the public holiday. If licence fee is not deposited by the 20th of the month, in case of delay, interest at the rate of 5 (five) percent per day on monthly payable licence shall be calculated and recovered.

23. The rights in regard to liquor/intoxication pertain to the State and as such, it is open to the State Government to part with those rights for consideration. The main object of parting with the privilege of sale of liquor is to augment revenue of the State. While doing so, it is always open to the State Government to lay down the manner of settlement and fix the criteria for payment of licence fees. Reference in this regard can be usefully made to the decision rendered in the case of Excise Commissioner Uttar Pradesh Allahabad and Others Vs. Prem Jeet Singh Gujral and Others, and the judgment rendered in the case of State of Orissa and Others Vs. Harinarayan Jaiswal and Others, . Condition No. 13(kha) of the sale notification is part of the conditions of licence. When such terms and conditions of licence were already accepted by the petitioners, while taking licence of different vends/groups, the petitioners cannot question the validity of the terms and conditions of licence or terms of settlement of licence.

24. It is the contention of the State that considering the shortcomings in the Excise Policy of 2004 of the State, while implementing the same, causing loss of revenue to the State, the State Government took a policy decision, vide its resolution dated 7.5.2008 and the same elaborately refers to the loss of revenue caused to the Government. The Rules framed in the year 2008 is known as

"Jharkhand Anugyapti Viniyaman Niyamawali, 2008" contained the similar condition in Rule 15 that the last date for deposit of monthly licence fee will be 20th day of each month and if licence fee is not deposited till 20th day of every month and in case of delay, interest calculated at the rate of 5% per day on monthly licence fee will be recovered. The policy decision of the State Government, vide resolution dated 20.2.2009, also discusses various aspects and the difficulties faced by the State Government and the policy decision of the State Government dated 7.5.2008, Rules 2008, remained protected in view of para. 23 of the resolution dated 20.2.2009. The relevant rules are nothing but reiteration of the above provisions contained in the Policy Decision of the State Government dated 7.5.2008 and the Policy Decision dated 20.2.2009. The petitioner cannot challenge the same on the ground that there is no substantive provision in the Bihar Excise Act.

25. The right to vend excisable article/liquor is exclusively owned by the State. Licence fee is neither in the nature of tax, nor in the nature of excise duty. It is a consideration paid to the State which parts with its right which really is in a nature of privilege.

26. It is the absolute prerogative of the State to prescribe suitable terms and conditions for settlement of licences. If the amount is fixed by way of annual licence fee and imposing interest of 5% per day, the licence holder cannot object to such a condition.

27. In the case of South Eastern Coalfields Ltd. Vs. State of M.P. and Others, , while challenging the vires of Rule 64-A of Mineral Concession Rules, similar contention was raised. As per Rule 64-A of the MCR, in case royalty is not paid from the sixtieth day of the expiry of the day fixed by that Government for payment of such royalty, rent fee or other sum, the State Government may charge simple interest at the rate of 24% p.a. on such rent, royalty or fee. In exercise of powers conferred u/s 13(2) of the MMDR Act, Rule 64-A was framed, in the said case, vires of Rule 64-A was challenged contending that the liability to pay interest or the right to levy interest can be brought into being only by a substantive provision of law; liability to pay interest cannot be left to be created by procedural law. Rejecting the condition that there being no substantive provision under the Act for payment of interest, Hon"ble Supreme Court held as under:--

15. We have carefully perused all the three decisions. All these decisions relate to recovery of tax whereon interest was sought to be levied for delayed payment. The Court chose to assign a literal meaning to the provisions of the substantive law as opposed to a liberal interpretation, and held that to empower levy of interest for delayed payment of tax there must be a substantive provision in the taxing statute. All the cases relied on by Shri S. Ganesh, the learned senior counsel, are such cases wherein the levy of interest was sought to be justified by reference to some provision made in the rules, which provision was held to be beyond the rule-making power as delegated by the parent statute and the

statute itself did not make a provision for payment of interest. The levy of such interest was held to be ultra vires the power of the authority levying the interest. Such is not the case before us. Here it is clear from the several provisions of the Act and the rules quoted hereinabove, no mining operation is permissible except in accordance with the terms and conditions of a mining lease and the rules made under the Act. The rules clearly provide for payment of interest. The lease deed executed by the coalfields incorporates a recital for the payment of interest. It is one of the terms and conditions of obtaining a mining lease that any delay in payment of royalty referable to a period beyond the sixtieth day of the expiry of the date fixed by the Government for payment of such royalty, shall carry a liability to pay simple interest calculated at the rate of 24% per annum on such amount of royalty. Rule 64-A has been framed in exercise of the powers conferred on the Central Government by Section 13 of the Act. The terms for payment of royalty, and for payment of interest for the period of delay, are authorized by the power to make rules for regulating the grant of mining lease. That apart, interest is included within the expression "other charges", the phrase as employed in Clause (i) of sub-section (2) of Section 13 of the Act. A decision by a Division Bench of the Andhra Pradesh High Court in *Suvarna Cements Limited and Another Vs. Union of India and Others*, has been brought to our notice. The Division Bench has held: (AIR p. 250, para. 13)

It cannot be said that the term "charges" occurring in Section 13(2)(i) does not include "Interest". Undoubtedly, interest payable by a lessee for delayed payment is a financial liability on the lessee and, therefore, a debt. It may also be construed as a cost or price or compensation payable to the contracting State authority for delay in payment of dues such as cess, royalty, etc.

We find ourselves in respectful agreement with the view of the law so taken by the High Court.

16. The Central Government can-in exercise of the delegated power of legislation, make provisions for payment of interest on the amount of royalty for the period of delay in payment. Rule 64-A has been validly enacted. The mining lessees, that is the Coalfields having entered into mining lease contracts with full knowledge of the terms and conditions thereof and having taken advantage thereunder of operating the mines, they cannot be subsequently allowed to wriggle out of the contractual obligations incurred by them, including the one for payment of interest, by executing the mining leases. The proposition is so well-settled that it hardly needs any authority in support thereof. Yet, reference may be had to *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, and *State of Haryana and Others Vs. Lal Chand and Others*, , and the several decisions cited therein.

(Underlining added)

Upholding the validity of Rule 64-A, Hon"ble Supreme Court, thus, held that the mining lessee, i.e. coalfields, having entered into the mining lease contract with

full knowledge of the terms and conditions thereof and having taken advantage thereunder of operating the mines, the mining lease holder cannot be subsequently allowed to wriggle out of the contractual obligation.

28. In *M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others*, relied upon by the petitioners, it was found that there was no substantive provision in the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 for levying interest on an arrears of tax and imposition of interest thereon was not authorized under the Act. In *M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others*, , the Act in question was a taxing statute and therefore, Hon''ble Supreme Court held that it must be interpreted as it reads with no addition and no subtraction on the ground of legislative intendment or otherwise. Likewise, in *India Carbon Ltd. etc. Vs. State of Assam*, , Hon''ble Supreme Court found that in absence of a substantive provision in Central Sales Tax for levying interest, Section 9(2) thereof does not enable the State Sales Tax authority to charge interest on Central Sales Tax due.

29. The present case is entirely different. The interest on delayed payment of annual licence fee by 20th day of every English calendar month is not sought to be imposed on tax due, rather interest at the rate of 5% per day would be levied on the licence fee due, which cannot be equated with tax. As pointed out earlier, object for providing such provision is to enforce timely payment of annual licence fee.

30. Mr. Indrajit Sinha, learned counsel for the petitioners, then contended that Section 89(2) of the Bihar Excise Act provides for subjects in relation to which the State Government can make rules and since Section 89(2) does not indicate that power has been conferred to the State Government to make rules providing imposition of interest in case of default in making payment by the licensee and therefore, Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009, is ultra vires the Bihar Excise Act. Learned counsel further submitted that the impugned condition of charging interest at the rate of 5% per day in case of default in payment of licence fee as contained in Rule 15 of the Rules made by the State Government, as in sub-section (1) of Section 89, is apparently not carrying out the purpose of the Act, inasmuch as they are not regulatory, rather confiscatory and therefore, Rule 15 of the Rules are not only contrary to the provisions of the Act, but are also contradictory with the Statutory Scheme.

31. Placing reliance upon the decision rendered in the case of *Gupta Modern Breweries Vs. State of Jammu and Kashmir and Others*, , learned counsel submitted that delegated power to legislate by making rules for carrying out the purpose of the Act is a general delegation without laying down any guidelines for levy of interest and the Rule 15 enacted imposing penal interest cannot be said to be "for carrying out the purpose of the Act."

32. Mr. Ajit Kumar, learned Advocate General, submitted that subjects

enumerated in Section 89(2) of the Bihar Excise Act, 1915 is merely illustrative and would not limit the scope of general power in Section 89(1) of the Act. It was further submitted that different clauses in Section 89(2) are only illustrative and Section 89(2) of the Act cannot be said to be exhaustive, inasmuch as it excludes the power of the State Government to make rules on any other subject which is not provided under clause (a) to (n) in Section 89(2). Learned Additional Advocate General further contended that the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 have been framed u/s 89(1) of the Bihar Excise Act, 1915, which provides that the State Government may make rules to carry out the objects of this Act and since the Bihar Excise Act, 1915 was enacted to regulate the matters relating to excise duty, Rule 15, which has been incorporated as clause 13(kha) in the license, has been framed as a regulatory measure. The object for framing Rule 15 is to deter the licence holders and to avoid delay in payment of licence fee.

33. Sections 89(1) and (2) of the Bihar Excise Act read as under:--

89. Power of State Government to make rules.--(1) The State Government may make rules to carry out the objects of this Act or any other law for the time being in force relating to the excise revenue.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the State Government may make rules--

(a) for prescribing the powers and duties of officers of the Excise Department;

(b) for regulating the delegation of any powers by the Board, the Commissioner of a Division, the Excise Commissioner or Collectors u/s 7, clause (g);

(c) for declaring in what cases or classes of cases and to what authorities appeal shall lie from orders, whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and manner for presenting, and the procedure for dealing with such appeals;

(d) for regulating the import, export or transport or any intoxicant;

(e) for regulating the periods for which licences for the wholesale or retail vend of any intoxicant may be granted, and the number of such licences which may be granted for any local area;

(f) for prohibiting the grant of licences for the retail sale of any intoxicant at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any intoxicant shall not ordinarily be licensed;

(g) for prohibiting the grant to specified classes of persons of licences for the retail sale of any intoxicant;

(h) for declaring, either generally, or in respect of areas described in the rules, the persons or classes of persons to whom any intoxicant may or may not be

sold;

(i) for regulating the procedure to be followed and prescribing the matters to be ascertained before any licence for the wholesale or retail vend of any intoxicant is granted for any locality;

(j) for restricting the exercise of any of the powers conferred by Clause (a) of sub-section (1) of Section 68 and by Sections 69 and 70;

(k) for declaring the Excise Officers to whom and the manner in which information or aid should be given u/s 75;

(l) for the grant of expenses to witnesses;

(m) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with the offences punishable under this Act and subsequently acquitted; and

(n) for prescribing restrictions or modification in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974)), relating to powers of Police Officers which are referred to in Section 78, sub-section (1) of this Act.

34. By sub-section (1) of Section 89 of the Bihar Excise Act, the State Government is empowered to make rules to carry out the objects of the Act or any other law for the time being in force relating to excise revenue. Sub-section (2) enumerates the matters in respect of which the State Government can make rules. Different clauses (a) to (n) in sub-section (2) of Section 89 only illustrate the nature of power granted to the State Government. The different clauses in Section 89(2) are only illustrative and cannot be said to be exhaustive. Sub-section (2) of Section 89 does not restrict the general power of the State Government under subsection (1).

35. Section 38 deals with "fees for terms, conditions, and form of, and duration of, licences, permits and passes." Section 89(1) and Section 38, when read together, make it clear that no licence/permit is permissible except in accordance with the terms and restrictions as prescribed. Rule 15 provides for payment of licence fee and also penal interest on default payment, in case one twelfth of the annual licence fee is not paid within 20th day of every month. Payment of licence fee and the interest payable in case of delayed payment is one of the terms and conditions of obtaining the licence. Undoubtedly payment of interest is incorporated in clause 13(kha) of the sale notification. Thus, terms for payment of licence fee and interest payable thereon are authorized by the powers to make rules [Section 89(1)].

36. The words in Section 89(1); "to carry out the objects of this Act or any other law for the time being in force relating to the excise revenue" are very relevant. The object of the Act relates to the import, export, transport, manufacture,

possession and sale of certain kinds of liquor and intoxicating drugs. Section 2(9) of the Act defines "Excise Revenue" to mean revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs. As rightly contended by the learned Additional Advocate General, Rule 15, which has been incorporated as clause 13(kha) of the licence, has been framed as a regulatory measure in order to ensure timely recovery of excise revenue. The object for framing Rule 15 is to deter licence holders and to avoid delay in payment of licence fee.

37. In the case of K. Ramanathan Vs. State of Tamil Nadu and Another, , Hon''ble Supreme Court held that the power to regulate carries with it full power over the subject-matter of regulation and in the absence of restrictive words, the power must be regarded as plenary power over the entire subject. In the case of Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc., , the Hon''ble Supreme Court has held that, the word "Regulate" is wide enough to confer the power in response to regulate either by increasing the rate, or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair price.

38. In the case of U.P. Power Corporation Ltd. Vs. National Thermal Power Corporation Ltd. and Others, , the Hon''ble Supreme Court has held that power to regulate implies a power to prescribe and enforce of such power and to frame reasonable rules and regulation as may be deemed necessary to conduct the business in a proper and orderly manner.

39. The main object of parting with the privilege of vending liquor is to augment the revenue. While doing so, it is always open to the State to lay down or fix the criteria or manner of settlement. The liability of the petitioners, who were granted licence for retail liquor shops, to pay interest is statutory as well as contractual liability. Interest at the rate of 5% per day is payable to the State for the delay in payment of licence fee. Licence fee is payable to the State for which the State parted with the privilege. Having taken the licence accepting all the terms and conditions of the licence including clause 13(kha) of the sale notification, it does not lie in the mouth of the petitioners to contend that the State Government has no power to frame rules and the challenge made on this score is untenable.

40. Re. Contention: Provisions in Bihar Excise Act. 1915 are complete mechanism for recovery of excise revenue and levy of 5% interest per day is arbitrary.

Section 42 of the Bihar Excise Act, 1915 deals with power to cancel licence, permit or pass, or impose penalty. It provides that the authority, subject to restriction prescribed by the State Government, may cancel or suspend the licence, permit or pass granted under the Act. It further provides that besides

cancelling or suspending the licence, permit or pass, the authority may impose penalty, if any duty or fee payable by the holder of the licence, permit or pass, has not been duly paid. Thus, there is a provision for imposing penalty provided in Section 42 itself. Section 57 of the Act provides that if any holder of a license, permit or pass granted under this Act, or any person in his employ and acting on his behalf, willfully does any act, in breach of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act, the holder of the license shall be liable to fine which may extend to Rs. 500/-. Similarly, Section 68 provides for compounding of offences and release of property liable to confiscation.

41. Relying on the above provisions of the Bihar Excise Act, 1915, it is contended that in case of breach of terms of the license committed by the licensee, the Act itself provides the consequences and therefore, an additional condition of imposition of interest at the rate of 5% per day of the defaulted amount cannot be imposed by the licensing authority on the licensee as it would be de-hors the provisions of the Bihar Excise Act, 1915.

42. Section 57 and Section 57(c) is a penal provision and for willful breach of conditions of the licences, fine is imposed which may extend to Rs. 500/-. Section 57 falls under Chapter-VIII "Offences and Penalties" and Section 57(c) is not attracted when it comes to the question of payment of annual licence fee and the delay in payment of annual licence fee. As pointed out earlier, Section 38 provides for imposing of restrictions and conditions of payment of fee for grant of licence, permit or pass granted under the Bihar Excise Act, 1915. The provision under Clause 13(Kha) imposing interest at the rate of 5% per day in case of default is a condition contained in the licence itself. Section 38 imposing the restrictions and conditions for grant of licence is an independent provision by itself and therefore, levy of 5% interest per day cannot be said to be de hors the provisions of the Act.

43. Re. contention: Rule 15 of Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 is ultra vires Article 14 of the Constitution of India.

Relying on the decisions in State of M.P. and Others Vs. Nandlal Jaiswal and Others, , Gupta Modern Breweries Vs. State of Jammu and Kashmir and Others, and Karnataka State Forest Industries Corporation Vs. Indian Rocks, , the learned counsel for the petitioners has submitted that though no one can claim as against the State the right to carry on trade or business in liquor however, when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Article 14 and when an action of the State is arbitrary or discriminatory, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable. Learned counsel for the petitioner submitted that when the State Government had granted the licence to certain persons like petitioners for retail sale of liquor, the action of the State Government levying excessive interest at the rate of 5% per day (1825% per annum) for the delay in payment of annual licence fee is arbitrary and

unreasonable violating Article 14 of the Constitution of India.

44. As discussed earlier, Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 was framed pursuant to the policy decisions of the State Government dated 7.5.2008 and Jharkhand Utpad Anugyapti Viniyaman Niyamawali, 2008 and the subsequent policy decision of the State Government dated 20.2.2009. The main object in parting with State's privilege to vend liquor is augmentation of the revenue. While doing so, it is always open to the State to fix criteria or restrictions and conditions for settlement of licences to ensure that it gets the best price for parting with the exclusive privilege and also to ensure prompt payment of one twelfth annual licence fee every month.

45. On behalf of the State, it was contended that Rule 15 is not to recover any tax or revenue but only to deter the licence holders in ensuring timely payment of one twelfth of annual licence fee every month. In the counter affidavit filed on behalf of the respondent Nos. 1, 3 to 5, it is stated that for settlement of licence of retail excise shops contained in various groups in the districts Hazaribagh and Ramgarh was held on 19.3.2009 and on other dates. The Sale Notification itself contained Clause 13(Kha) stipulating payment of interest at the rate of 5% per day if one twelfth of annual licence fee is not paid by 20th of each month and the petitioners accepted the terms and conditions contained in the notification and participated in the settlement. The petitioners with eyes wide open, having participated in the settlement, which was conducted through lottery system, cannot be allowed to turn round and question the validity of those obligations or the validity of the Rules which constitute the terms of the contract. We do not find any arbitrariness or unreasonableness in the State action which is violative of Article 14 of the Constitution of India.

46. The Learned Counsel for the petitioners then referred to decision in Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, and submitted that Article 14 of the Constitution of India would be attracted even in the matter of trade in liquor. It is submitted that when the State decides to grant such right or privilege to others the State cannot escape the rigor of Article 14. The learned counsel has further relied on the decision in State of M.P. and Others Vs. Nandlal Jaiswal and Others, wherein the Supreme Court has held as under:--

33. But, before we do so, we may at this stage conveniently refer to a contention of a preliminary nature advanced on behalf of the State Government and Respondents 5 to 11 against the applicability of Article 14 in a case dealing with the grant of liquor licences. The contention was that trade or business in liquor is so inherently pernicious that no one can claim any fundamental right in respect of it and Article 14 cannot therefore be invoked by the petitioners. Now, it is true, and it is well settled by several decisions of this Court including the decision in Har Shanker vs. Deputy Excise & Taxation Commissioner that 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 absolutely 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 others 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 of the State Government and Respondents 5 to 11 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.

47. In Kerala Samsthana Chethu Thozhilali Union (supra), the licence holders challenged the validity of Rules 4(2) and 9(10)(b) of the Kerala Abkari Shop Disposal Rules, 2002 which provide employment of one Arrack worker in a toddy shop with a view to rehabilitate the workers who had at all then been engaged in manufacture, import, export, transport and sale possession of Arrack. The Hon"ble Supreme Court held that since the Kerala Abkari Act was enacted to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and/or intoxicating drug in the State of Kerala, the State cannot take recourse to something which is not within the ambit of the Act or what is otherwise prohibited in law. To grant employment to one arrack worker in each toddy shop in preference to the toddy workers neither promotes the policies nor secures the objects of the Act. It was, therefore, held that rule was ultra vires the provisions of the Act.

48. Re. Contention: Rule 15 levying interest at the rate of 5% per day (1825% per annum) for the delayed payment of one twelfth of annual licence fee is unconscionable and unreasonable.

Learned counsel for the petitioners then contended that the State and its authorities have to be just, fair and reasonable in all their activities including those in the field of contracts and even in the matter of contract the State Government cannot impose unreasonable conditions and further submitted that the penalty imposed under Clause 13(Kha) is harsh, arbitrary, unfair, unjust and unreasonable.

49. Relying on the judgment in Balmer Lawrie and Co. Ltd. and Others Vs. Partha Sarathi Sen Roy and Others, , it is contended that unfair and unreasonable contracts or an unfair and unreasonable Clause (s) in a contract, entered into by parties, who do not enjoy equal bargaining power, are hit by Section 23 of the Contract Act and are against public policy and should be struck down. The judgment in the case of Balmer Lawrie & Co. Ltd. and Others (supra) deals with unequal power of employer and employee and the observation in paragraph No. 30 in the judgment refers to Clause 11 of the appointment letter which provided termination of services of employee, at the sole discretion of Government company by giving three months" notice in writing, without assigning any reason

for such decision. The said decision cannot be applied to the present case.

50. In *Panna Lal and Others etc., etc., Vs. State of Rajasthan and Others*, , it has been held that the licensee having voluntarily accepted the contract and after having fully exploited to its advantage the contract to the exclusion of other, cannot resile from the contract on the ground that the terms of payment were onerous. It has been held that since the licensee accepted the licence by excluding competitors, it would not be open to the licensee to challenge the terms either on the ground of inconvenience or inconsequence of the terms or harshness of terms.

51. As noticed above, the grant of licence to the licensee to the exclusion of the other competitors is a privilege granted by the Government and for such grant, a condition under Clause 13(Kha) has been imposed which cannot be challenged contending that it was an unfair and unreasonable clause in contract and thus, hit by Section 23 of the Contract Act and therefore, liable to be struck down. Dealing in intoxicant is not a trade or business within the meaning of Article 19(1) (g) of the Constitution of India. Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible with other trades are lawful and reasonable so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest and harmful and dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants, viz. manufacture, collection, sale and consumption. (*P.N. Kaushal and Others Vs. Union of India (UOI) and Others*,).

52. As pointed out earlier, since the terms and conditions were already accepted by the petitioners while taking settlement of different vends, there shall be no scope for them to question the validity of the conditions of settlement. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , the Hon"ble Supreme Court has held that writ jurisdiction of the High Court under Article 226 of the Constitution of India is not intended to facilitate avoidance of obligations voluntarily incurred. Having accepted the terms and conditions of licence and agreeing to pay one twelfth of annual licence fee by 20th of every month and interest at the rate of 5% per day for the delay in payment, the petitioners cannot object to such conditions as unconscionable and arbitrary.

53. Rule introduced as a deterrent measure only for the purpose of prompt collection of revenue.

A chart has been produced by the respondents to indicate as to how prior to the implementation of the provisions in question, the licensees used to commit unnecessary delay in depositing licence fee which resulted in huge non-recovered arrears and also indicating that after the implementation of the provision in question, the percentage of licence holder delaying the deposit has substantially reduced. We may usefully refer to the chart containing the figures as given in para-9 of the counter affidavit filed in W.P. (C) No. 6292 of 2013 which reads as

under:--

It is thus, submitted that the licence fee is being collected by the State Government in a timely and regular manner by successful implementation of the rules and the purpose for which it was framed has been achieved. It is further stated that all the writ petitioners belong to two particular districts namely, Hazaribagh and Ramgarh in the State and no such case of default has been reported from any other district in the State.

54. In the counter-affidavit, filed on behalf of the respondent Nos. 1, 3 to 5 it is stated that the settlement of retail excise shops contained in Group-7 in the Hazaribagh district was held in the Conference Hall of Deputy Commissioner, Hazaribagh on 19.3.2009. The sale notification itself contained Clause 13(Kha), which stipulate payment of interest at the rate of 5% per day if one twelfth of the annual licence fee is not paid by the 20th day of each month and the petitioners accepted the terms and conditions contained in the said notification and participated in the settlement. The petitioners, who, with eyes wide open, participated in the settlement which was conducted through lottery system pursuant to the sale notification published on 2.3.2009, cannot wriggle out of the contractual obligations. The stand taken by the State respondents has not been controverted or contradicted by the petitioners by providing any material to the contrary.

55. Challenge to the initiation of the Certificate Proceedings.

The learned counsel for the petitioners has further submitted that u/s 93 of the Bihar Excise Act, 1915 the recovery of dues has to be under the process prescribed for the recovery of arrears of revenue and since u/s 17(a) of Bihar and Orissa Public Demand and Recovery Act, 1914 the interest @ 12% per annum only can be recovered, the provision under Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 levying interest @ 5% per day on the licence fee is wholly arbitrary and unjustified.

56. Per contra, the learned Additional Advocate General submitted that after the certificate was issued and a notice was served upon the licensee, it is not open to the licensee to challenge the demand notice on the ground of Rule 15 of the Jharkhand Excise (Settlement of License for Retail Sale of Liquor) Rules, 2009 and Clause 13(Kha) of the licence being wholly unjustified and unreasonable discriminatory. The learned Additional Advocate General has submitted that as per Bihar Excise Act, 1915, any demand in respect of the excise matter is excise revenue and 5% interest per day is the demand made in terms of Bihar Excise Act and after written requisition in the prescribed form is sent to the Certificate Officer, notice in the prescribed form and copy of the certificate proceeding are served upon the Certificate Debtor and the certificate proceeding is in accordance with the provisions of the Bihar Excise Act and it does not suffer from any arbitrariness.

57. Since the petitioners committed default in making payment of licence fee,

demand, as per the terms and conditions of the licence, has been made for 5% interest per day for the delay in payment of one twelfth of the annual licence fee. Demand of 5% interest per day is the demand pertaining to excise matter and any demand in respect of the excise matter is the demand of excise revenue and initiation of certificate proceedings is in accordance with the Bihar Excise Act and Bihar and Orissa Public Demand Recovery Act. u/s 17(a) of the said Act, twelve per cent interest is claimed in the certificate proceedings on the "demand amount quantified" and therefore, the contention of the petitioners that the certificate proceedings are vitiated due to imposition of interest in excess of 12% is liable to be rejected.

58. To summarize our conclusion:--

In exercise of the delegated powers of legislation u/s 89, the State has the legislative competence to make rules for payment of interest for the period of delay in deposit of one twelfth of annual licence fee. Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 is in conformity with the Bihar Excise Act, 1915 and there is no arbitrariness or unreasonableness. In terms of Section 38 read with Rule 15, the provision under clause 13(kha) imposing interest at the rate of 5% per day in case of default is one of the terms and conditions for grant of licence. Having accepted the terms and conditions of the licence and having taken advantage thereunder, the petitioners cannot wriggle out of the contractual obligation. There is no merit in the challenge made to the vires of Rule 15 of the Jharkhand Excise (Settlement of Licence for Retail Sale of Liquor) Rules, 2009 and clause 13 (kha) of the sale notification (dated 2.3.2009) and to the initiation of certificate proceedings.

In the result, all the writ petitions are dismissed. The interim orders granted in all the writ petitions are vacated. Consequently, all the interlocutory applications are dismissed.