

**(1993) 04 AP CK 0036**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 14856 of 1990**

Rajaheel Wine Merchants and Others

APPELLANT

Vs

The Commissioner of Excise and Others

RESPONDENT

**Date of Decision : 29-04-1993**

**Acts Referred:**

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 11(2), 4(2)  
Andhra Pradesh Breweries (Amendment) Rules, 1970 — Rule 34(11)  
Andhra Pradesh Distillery Rules, 1970 — Rule 66(12)  
Andhra Pradesh Excise Act, 1968 — Section 72, 9(1)  
Constitution of India, 1950 — Article 14, 19, 19(1), 21

**Citation : (1993) 3 ALT 88 : (1993) 2 APLJ 139**

**Hon'ble Judges : G.V.L. Narasimha Rao, J;G. Radhakrishna Rao, J**

**Bench : Division Bench**

**Advocate : T. Raghunath Reddy, P. Sitarama Raju, Vemulapati Pattabhi, K. Pratap Reddy, R.S. Raju, A.T.M. Rangaramanujam, B. Sairam Goud, K. Ramulu, Koka Raghava Rao, G. Ravi and Sumalini Reddy, for the Appellant; Government Pleader, for the Respondent**

## Judgement

G. Radhakrishna Rao, J.—Amendments made to Sub-rule (2) of Rule 4 and Sub-rule (2) of Rule 11 of the Andhra Pradesh Foreign and Indian Liquor Rules, 1970 and to Sub-rule (12) of Rule 66 of the Andhra Pradesh Distillery Rules, 1970, substituted by G.O.Ms.No. 187, Revenue [Excise.-III (2)] Department, dated 18-3-1991, are being challenged in this batch of Writ Petitions. The effect of the above amendments is under Sub-rule (2) of Rule 4 the label fee is enhanced from Rs. 100/- to Rs. 25,000/- while under Sub-rule (2) of Rule 11 of the Andhra Pradesh Foreign and Indian Liquor Rules, 1970 and under Sub-rule (12) of Rule 66 of the Andhra Pradesh Distillery Rules, a fee of Rs. 25,000/- is newly introduced. These amendments are made in exercise of the powers conferred by Section 72 of the Andhra Pradesh Excise Act, 1968 (Andhra Pradesh Act 17 of 1968). These amendments are challenged as arbitrary, illegal, ultra vires and unreasonable and also offending Articles 14 and 19(1)(g) of the Constitution of India.

2. As common questions of law and fact are involved in this entire batch of Writ Petitions, they are being disposed of by a common judgment.

3. The main grievance of the petitioners in all the above writ petitions is as follows:- The amended sub-rules prescribe levy of a fee of Rs. 25,000/- for each variety of label sought to be approved by the Commissioner of Excise and for similar levy of fee for re-approval in every excise year. The present sub-rule in each case is ultra vires the rule making power conferred on the Government as the levy of such fee is beyond the scope of the main Act itself as it is not provided under the Act for levy of any such fees for approval of labels. It is nowhere laid down in the Andhra Pradesh Excise Act, 1968 for the levy of any fee for approval of the labels to be affixed on the bottles or for the re-approval of such labels every year. As such, Sub-rule (2) of Rule 4 or Sub-rule (2) of Rule 11 of the A.P. Foreign Liquor and Indian Liquor Rules 1970 or Sub-rule (12) of Rule 66 of the A.P. Distillery Rules, 1970 is beyond the rule making power conferred on the Government u/s 72 of the Andhra Pradesh Excise Act and consequently it is illegal and unenforceable. As the impugned sub-rules contemplate levy of fees, they must relate to any particular service rendered by the respondents to the petitioners and they must be commensurate to the services so rendered. As there is no quid pro quo for the fee sought to be levied, the impugned levy is arbitrary and unsustainable. The above said amendments are given retrospective effect from 28-8-1989 by which the respondents will be entitled to collect the so called label fee of Rs. 25,000/- in each case for the approval even in respect of such labels which were already approved by the 2nd respondent long prior to coming into force of the said sub-rules, which is unreasonable. The proposed levy of the fee at the rate of Rs. 25,000/- on each variety of the labels approved and to be approved is an unreasonable restriction on the freedom of trade guaranteed on the petitioners under Article 19(1)(g) of the Constitution of India. It is the complaint of the petitioners in all the writ petitions that the 2nd respondent is insisting on the payment of separate fees in respect of the labels relating to the varieties for which the export permit or import permit, as the case may be, is obtained by the petitioners for the same varieties for which the approval fee is paid for local sales. There is no basis for such levy even in the amended rules. As such the demand is illegal and unwarranted. The collection of label fee is only to augment the revenue and there is no basis for enhancement. The impugned action is unconstitutional and violative of Articles 14, 19 and 21 of the Constitution of India since this is an inter-state trade and commerce where the movement of goods within India between a State and State should be free and should not be put to too many restrictions. The impugned amendments are, therefore, contrary to federal structure of the Constitution of India and violative of Article 301 of the Constitution of India.

4. The respondents denied that the Government has no power to levy fee. On the other hand, it is the case of the respondents that the Government is parting with the right to carry on trade and when the Government has got exclusive right in dealing in liquor and when they are parting with that exclusive privilege or right,

the question of infringement of fundamental right under Article 19(1)(g) of the Constitution does not arise. It is stated that the Government is competent to levy fees on licences for supply of intoxicants. In support of this contention, they have relied upon Section 21 (3) and Section 22 of the A.P. Excise Act. It is stated that a licence for the supply of a particular product in the form of approval of its label on statutory Form FL1-B, has to be obtained first, after paying the required fee. Then that particular product can be imported after obtaining a permit to this effect on payment of countervailing duty and import fee at prescribed rates. It is stated that the obtaining of approval of label for the purpose of import of liquor into the State after paying a fee of Rs. 100/- was there in Sub-rule (2) of Rule 4 of the Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 since 1-10-1987 and the same was complied with by the petitioners and several other similarly situated manufacturers in the country without raising any objection. They have also relied upon Rule 4 (2) as existed since 1-10-1987 till its amendment vide G.O.Ms.No. 187, dated 18-3-1991 and contended that the manufacturers of liquor within the State of Andhra Pradesh have to obtain approval of labels of their products on payment of fee before manufacturing for the market within the State. Similarly approval has to be obtained separately from the Commissioner of Excise on payment of equal fee if they wish to export the same product in the markets outside the State. If any exemption is accorded to the petitioners, it will amount to discrimination between the licensees within the State and manufacturers from outside the State beside losing a reasonable and legitimate source of revenue. It is stated that Rule 4 (2) of the A.P. Foreign Liquor and Indian Liquor Rules 1970 is strictly in accordance with the provisions of Sections 9, 12 and 22 of the A.P. Excise Act. It is a well settled principle that there is no fundamental right in matters relating to intoxicants. Therefore, the question of offending Articles 14 and 19(1)(g) of the Constitution of India does not arise. It is also submitted that in Section 9 (1) of the Excise Act it is stated that an import permit may be issued on such terms as may be prescribed and on payment of such duty, fee as levied under the said Act. Accordingly, the terms are prescribed and the duty as well as fee are fixed in the rules notified as required u/s 72 (1) of the Excise Act. Proceedings of approval of label on the form FL1-B is a licence recognising a particular brand of intoxicant to be brought into the market from outside the State on payment of a prescribed fee. Thus, the legality of collection of fee for such approval was already admitted by the petitioners by complying with the same for the last several years. Having paid the fee earlier and having the privilege, it is not open to the petitioners to raise an objection with regard to the registration fee of approval of label. Section 72 (i) of the A.P. Excise Act authorises the Government to make rules for carrying out any purpose of the Act. The purpose of the Act in regulating the sale of intoxicant by importing it from a place outside the State is achieved by making the impugned rule. The fee of Rs. 100/- per label for the purpose of approval was payable by the applicants according to Rule 4 (2) of the A.P.F.L. & I.L. Rules. The same fee is revised by issuing an amendment to the said rule issued on 18-3-1991 vide G.O.Ms.No. 187, Revenue (Excise-III) Department. The amended

rule does not deprive the petitioners of their acquired right. The petitioners are supposed to abide by the law under which they have acquired the very right. The amendment that has been made is perfectly in order and it does not suffer from any illegality.

5. The following contentions are raised on behalf of the petitioners:- It is contended that the impugned G.O. is ultra vires in that a reading of Sections 9 to 13, 15, 17, 21 and 22 read with Section 72 of the A.P. Excise Act do not empower collection of label approval fee. Section 22 (d) cannot be interpreted as empowering the rule making authority to demand label approval fee for the same cannot be one of the modes of levying excise duty. It is also contended that if the exorbitant label approval fee is treated as tax, the same cannot be imposed by the subordinate Legislation and the same is violative of Article 265 of the Constitution of India. According to the petitioners, if the L. A.F. is treated as fee, there is no corresponding or commensurating service to satisfy quid pro quo because admittedly the 1st respondent resorted to this increase for an irrational cause saying that it is difficult to maintain and keep tract of label brands by retailers as well as excise officials thereby resulting in evasion of Government Revenue. There is no evidence forthcoming to demonstrate this. The increase in L.A.F. is arbitrary in the face of Article 14 of the Constitution of India. The rule that one should pay label approval fee of Rs. 25,000/- per brand per year is irrational even on their own showing. The learned counsel for the petitioners finally contended that in any event the impugned notification is prospective from the date of notification as allegedly it is for regulating the system of labelling of liquor bottles with a view to protect consumer and genuine trader.

6. In support of the above contentions advanced on behalf of the petitioners, the petitioners have also filed one comparative statement showing the particulars of excise duties, fees and other amounts payable by the licensee under different rules. It is necessary to have a comparative study of the fees for proper appreciation of the issue on hand.

7. The statement showing the particulars of excise duties, fees and other amounts payable by the licensee under different rules is extracted as hereunder:

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|                                                                   |                                  |
|-------------------------------------------------------------------|----------------------------------|
|                                                                   | A.P. BREWERY ANDHRA PRADESH A.P. |
| FOREIGN LIQUOR RULES 1970 DISTILLERY RULES AND INDIAN LIQUOR 1970 | RULES                            |

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|                                                                               |                                                                                     |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|                                                                               | Rule4(b):Fee Rs. 200/- IML.PROD.                                                    |
| CASH BANK Rule 4 (2) Rule 5(a): No licence DEPOSIT GUARANTEE Remittance of    | a fee of shall be granted Rs. 100/-for each such variety unless deposit of of label |
| sought to be approved. not less than Below 1.50 Rs.10,000/- and a lakhs P.Ls. | 50,000/- 2,00,000/- ENHANCED TO Rs. 25,000/- Scheduled Bank by                      |
| G.O.Ms.No.187 dated guarantee of 18-3-1991. Rs.5,00,000/- Rule 6: Licence fee | Above 1.50 of Rs.8,00,000/-per Lakhs P.Ls. annum. For a new and below licence       |
| Rs.3,000/- till manufacturing commences Rule 7: Excise duty 3.00 lakhs.       |                                                                                     |

50,000/- 3,00,000/- shall be levied at such rate as specified Above 3.00 by the Government. lakhs and Bank guarantee not less below than Rs.50,000/- for 5.00 Lakhs 75,000/- 4,00,000/- 1.00 lakh proof litres. Above 5.00 lakhs and below 10 lakhs 1,00,000/- 5,00,000/- Above 10.00 lakhs 2,00,000/- 10,00,000/- For rectified spirit security of Rs.50,000/- Bank guarantee of Rs.5 lakhs \_\_\_\_\_

\_\_\_\_\_ ANNUAL LICENCE FEE FOR D2 LICENCE FOR MANUFACTURE OF RECTIFIED SPIRIT SHALL BE PAID AS PRESCRIBED HEREUNDER: \_\_\_\_\_

\_\_\_\_\_ Licence capacity of production Annual licence per annum in bulk Ltrs. R.S. fee Upto 20.00 lakhs Rs. 3,00,000-00 Above 20.00 lakhs Rs. 4,00,000-00 \_\_\_\_\_

\_\_\_\_\_ IMFL Below 1.00 Lakh Rs. 2,00,000-00 1.00 Lakhs-5.00 Lakhs Rs. 3,00,000-00 5.00 Lakhs - 20.00 Lakhs Rs. 5,00,000-00 Above 20.00 Lakhs Rs.10,00,000-00 \_\_\_\_\_

\_\_\_\_\_ New licence, licensee fee is Rs.5,000/- till the manufacturing commences: Excise duty shall be specified from time to time. Rule 6(b)(i) Bank guarantee not less than 25,000/- for every one lakh litres. Bank guarantee does not exceed 75,000/-.

\_\_\_\_\_ 8. The amendments made to Sub-rule (1) of Rule 5 of the Andhra Pradesh Distillery Rules 1970 and Rule 6 of the Andhra Pradesh Brewery Rules, 1970 enhancing the licence fee for obtaining distillery and brewery licences by G.O.Ms.No. 74, Revenue (Ex.III) Department dated 1-2-1990 have come up for consideration before a Division Bench of this court in W.P.No. 3613 of 1990 and batch dated 6th March, 1992. The Division Bench has considered the legal position with reference to the decision rendered by the Supreme Court reported in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and stated that the State is parting with its exclusive right and privilege of producing and dealing in liquor in favour of private licensees and in doing so, the State can legitimately except to realise the best possible price or consideration. The Division Bench held as follows:-

".....the rule -making authority has undoubted power to make a rule with retrospective effect. Such retrospective effect can even extend to prescription or enhancement of licence fee. It is also relevant to refer to condition No. 1 of Form D2 licence, according to which "the terms and conditions of this licence may be modified or added at any time during the currency of this licence." This is another pointer to the conclusion that the licence fee once fixed is not beyond the scope of amendment before the expiry of the period of licence. We, therefore, find no substance in second contention of the learned counsel."

9. In support of the proposition that there is no fundamental right under Article 19(1)(g) of the Constitution of India to a citizen to carry on trade or business in any intoxicants and liquors and that the State also has got exclusive right or privilege of dealing in liquor, reliance is placed on the following decisions. In Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief

Commissioner, Ajmer and Others, the Supreme Court held as follows:-

"The Legislature of a State is fully competent to regulate the business of vending intoxicating liquor to mitigate its evils or to suppress it entirely. " There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen. As it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the Governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licences for that -purpose. It is a matter of legislative will only. Hence, the provisions of the (Ajmer) Excise Regulation (I of 1915) purporting to regulate trade in liquor in all its different spheres are valid."

In Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, The Supreme Court held as follows:-

"It is no doubt true that dealing in liquor is business and a citizen has a right to do business in that commodity but the State can make a law imposing reasonable restrictions on the said right in public interest. In dealing with reasonable restrictions no abstract standard or general pattern is possible to lay down. In each case, regard has to be had to the nature of trade or business, the conditions prevailing in such trade or business, the nature of the infringement alleged and the underlying- , purpose of the restriction, the imposition of which is alleged to constitute an infringement."

In Doongaji and Co. Vs. State of Madhya Pradesh and others, the Supreme Court held as follows:-

"It is settled law by several decisions of this court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power has power to prohibit absolutely any form of activity in relation to an intoxicant, its manufacture, possession, import and export. No one can claim, as against the State, the rights to carry on trade or business in any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or privilege to the others, then the State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure is arbitrary violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of Article 14"

In Har Shankar v. Dy. E. & T.Commr. (1 supra) while dealing with Article 19 (1) (g) and (6) of the Constitution of India, the Supreme Court observed as follows:-

"There is no fundamental right to do trade or business in intoxicants. The State under its regulatory powers, has the right to prohibit absolutely every form of

activity in relation to intoxicants, its manufacture, storage, export import sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. The wider right to prohibit absolutely would include the narrower right to permit dealings in intoxicants on such terms of general application as the State deems expedient. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration."

It was further held by the Supreme Court that since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration, and that the power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter.

In *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, also the Supreme Court expressed the same view, as in the above cases, holding that the State has the exclusive right or privilege of manufacturing and selling liquor.

10. For the proposition that when State parts with its privilege to the others, the same has to be done consistent with principles of equality and any infraction in this behalf at its pleasure is arbitrary violating Article 14 of the Constitution of India, the following decisions have been relied upon. In *V.G. Row Vs. The State of Madras*, the Madras High Court held as follows:-

"What restrictions are reasonable is for the court to decide. There can be no absolute standard of reasonableness. In deciding on the reasonableness of the restrictions, it is not possible to think only in the abstract. Several circumstances must be taken into consideration, in particular, the purpose of the Act, the conditions prevailing in the country at the time, the duration of the restriction, its extent and nature. Further, in deciding on the reasonableness or otherwise of the restrictions imposed by law, the substantive as well as the procedural provisions of the law should be examined."

In *Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others*, the Supreme Court observed as follows:-

"No abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict."

In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Supreme Court while dealing with Articles 14 and 16 of the Constitution held as follows:-

"Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be

guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but it is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide, exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former."

In *Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc.*, the Supreme Court held as follows:-

"No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made specially authorises the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority. A rule-making authority has no plenary power. It has to act within the limits of the power granted to it."

In *S.R. I. Roller Mills Pvt. Ltd. and etc. Vs. Union of India and others*, The Division Bench of the Bombay High Court observed as follows:-

"Section 3 does not empower the Central Government to levy any fees or taxes in express terms. It gives to the Central Government the power to prohibit or regulate the import into India of any articles like to cause infection to any crop. The right to levy either a tax or fee must be specifically conferred on the concerned authority. It cannot be spelt out from a regulatory power. A delegated power to regulate or prohibit any activity does not therefore include by implication a power to charge any fees or taxes."

11. It is next contended that if the levy is treated as fee, there are no circumstances of broad relationship to satisfy "quid pro quo" and therefore the same is bad and illegal. In support of this contention reliance is placed on the decision of the Supreme Court reported in *Commissioner and Secretary to Govt., Commercial Taxes and Religious Endowments Department and others Vs. Sree Murugan Financing Corporation, Coimbatore and others*, In this case, while dealing with Tamil Nadu Chit Funds Act and the rules framed thereunder, the Supreme Court observed as follows:-

"The enhanced fee for registration of bye-laws of chit is justified on the legal as well as the factual anvil of quid pro quo. Apart from the appointment of Registrar, its staff and various other functionaries, the scheme of the Act in its operation involves huge expenditure which is entirely met out of the fee-Fund. The fees collected under the Act have, therefore, live nexus with the expenditure incurred for the benefit of the chit fund business. There is effective supervision and control at every stage of the functioning of the chit fund business. It cannot be held that the number of the subscribers or the instalments has no nexus with the registration fee. Every subscriber has to enter into an agreement with the foreman who conducts the business on behalf of the proprietors. The object of

the Act, Rules obviously is to protect the interest of the subscribers. More the subscribers more burden on the authorities under the Act/Rules and as a consequence more fee is required to meet the expenditure. It is no doubt correct that after registration of bye-laws fees are payable u/s 53 of the Act for performance of various other functions by the Registrar and his staff but that is justified in view of the scheme of the Act."

While holding so, the Supreme Court held that the enhanced fee is justified on the legal as well as the factual anvil of "quid pro quo".

12. In *Synthetics & Chemicals Ltd. v. State of U.P.*, the Supreme Court observed as follows:-

"The States have the power to regulate the use of alcohol and that power must include power to make provisions to prevent and/or check industrial alcohol often being used as intoxicating or drinkable alcohol. The question is whether in the grab of regulations a legislation which is in pith and substance, fee or levy which has no connection with the cost or expenses administering the regulation, can be imposed purely as regulatory measure. Judged by the pith and substance of the impugned legislation, these levies cannot be treated as part of regulatory measures. The State has power to regulate though perhaps not as emanation of police power, but as an expression of the sovereign power of the State. But that power has its limitations."

While dealing with the distinction between tax and fee, the Supreme Court in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, observed as follows:-

"It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro

quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is and must always be co-relation between the fee collected and the service intended to be rendered. Whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case."

13. Bearing in mind the proposition of law as laid down by the Supreme Court in the above referred cases, let us examine the batch of writ petitions on hand. It is not in dispute that the State is parting with the exclusive right to deal with the distribution of the liquor. When the State is parting with the right or privilege, the State is entitled to collect the licence fee or other fee which they are entitled to levy. From the table extracted above it is seen that a broad classification has been made with regard to the annual licence fee in respect of different licences and the bank guarantees and cash deposits and it is a reasonable classification with regard to the turn over. In none of the cases, the petitioners have demonstrated that by virtue of the collection of the fee upto Rs. 25,000/-for the label or enhancement of the fee in any other form they have suffered any loss. On the other hand, the revenue that is being paid on this account is being increased from year to year. If there is a loss, definitely the participants will be less and the State has to run after the persons. The persons are running after for doing business. On account of collection of higher fee the petitioners complain that the mere enhancement by itself is a ground for quashing the amendment on the ground that it is arbitrary or illegal. It is the duty of the State to tap each and every reasonable source that is available to augment there venue particularly in the inflatory trend where the State has to incur heavy expenditure. It is not the act that alone is played by signing the licences and receiving the amount. A machinery has been established for the collection and administration of the department and the establishment charges are being enhanced from time to time. The enhancement of the licence fee is therefore not violative of Article 14. In regard to levy of any fee, Section 21 (3) of the Andhra Pradesh Excise Act provides as follows:-

"Different rates may be specified in Sub-section (1) and (2) for different kinds of excisable articles and different modes of levying duties u/s 22."

Section 22 provides as follows:-

"Section 22:- The Excise Duty and Countervailing duty u/s 21 shall be levied in one or more of the following modes:-

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) by fees on licences for manufacture, supply or sale of any excisable article.

Therefore, the Government is competent to levy fees on licences for supply of intoxicants.

14. Section 9 (1) of the A.P. Excise Act reads as follows:-

"Import of intoxicant:-

No intoxicant shall be imported except under a permit issued by such officer, not below the rank of an Excise Superintendent and on such terms as may be prescribed and on payment of such excise duty or counter vailing duty and fees as may be levied under this Act."

Rule 4 (2) of the Andhra Pradesh Liquor and Indian Liquor Rules 1970 provides that the manufacturers of Indian Liquor or brewers of other States and Star hotel holding a licence in Form FL17 and holders of distributors licence in Form FL. 27 and Military canteen stores department, Distributor-cum-wholesale licence in Form F129 under these rules only shall be eligible to apply for approval of such labels under these rules. The main portion of this rule, which is introduced by way of amendment under the impugned CO., is as follows:-

"The application shall be in the form of F.L. 1 (A) duly affixed with court fee stamp of the value of Rs. 2/- and shall be enclosed with fifty copies of each variety of label and challan of remittance of a fee of Rs. 25,000/- for each such variety of label, sought to be approved, under appropriate head of account at any Government Treasury in the State. The applicant should also get the label re-approved for each excise year by paying a fee of Rs. 25,000/- for each variety of label."

The relevant portion of Rule 4 (2) as it existed prior to amendment is as follows:-

"The application shall be in the form FL.1-A duly affixed with court fee stamp of the value of Rs. 2/- and shall be enclosed with fifty copies of each variety of label and a challan of remittance of a fee of Rs. 100/- for each such variety of label sought to be approved under appropriate head of account at any Government Treasury in the State."

Likewise, under amended Sub-rule (2) of Rule 11, label fee of Rs. 25,000/- is newly introduced on the same lines as under Sub-rule (2) of Rule 4. We may also extract hereunder the relevant portion of Sub-rule (12) of Rule 66 of the A.P. Distillery Rules, 1970, which is almost the same as in the case of Sub-rule (2) of Rule 4 and Sub-rule (2) of Rule 11 of the A.P. Foreign Liquor & Indian Liquor Rules, 1970. It is as follows:-

"The labels shall be affixed to the bottles by the licensee only after such labels are duly approved by the Commissioner. For this purpose the licensee shall submit a copy of the label proposed to be affixed by him in quadruplicate and challan of remittance of fee of Rs. 25,000/- for each such variety of label sought to be approved under appropriate head of account at any Government Treasury in the State. The applicant should also get the label reapproved for each Excise

year by paying fee of Rs. 25,000/- for each variety of label. The application shall be submitted to the Superintendent for Distilleries, who shall forward them to the Commissioner of Excise through Director of Distilleries and Brewers for approval by the Commissioner....."

Rule 5 (1) of the A.P. Foreign Liquor & Indian Liquor Rules, 1970. is as follows:-

"On receipt of an application Form FL.1, the Collector or any Excise Officer specially authorised by the Commissioner may after such enquiry as he may consider necessary and on being satisfied that there is no objection to issue import permit applied for issue the permit, subject to the following conditions, namely:- (i) that the applicant has paid and produced the challan in original of token of having credited into Government Treasury the entire countervailing duty leviable on the liquor to be imported at the rates In force.

(ii) that the applicant has paid and produced the challan in original in token of having credited into the Government Treasury import fee at the following rates:-

(a) Beer, Cider, Ale, Stout, porter or other One rupee per fermented liquor usually from malt for bulk litre, foreign liquor

(b) Any other Indian Liquor or excluding Two rupees per arrack. bulk litre.

(iii) that the labels of each variety of liquor sought to be imported by the applicant are those approved by the Commissioner."

The aforesaid provisions of the Excise Act and the A.P. Foreign Liquor & Indian Liquor Rules, 1970 make it abundantly clear that there are two components of the process of import. A licence for the supply (from a place outside the State) of a particular product in the form of approval of its label on statutory form F11-B has to be obtained first after paying the required fee. Then that particular product can be imported after obtaining a permit to this effect on payment of countervailing duty and import fee at the prescribed rates. So when the petitioners want to import liquor from outside the State and that right has been parted with by the State Government, definitely the State is entitled to collect the fee and it cannot be said Rule 4 (2) or Rule 11 (2) of the A.P. Foreign Liquor & Indian Liquor Rules or Rule 66 (12) of the A.P. Distillery Rules is not in accordance with Section 9 (1) of the Excise Act. The legality of collection of fee as per original Sub-rule (2) of Rule 4 for such approval was already admitted by the petitioners by complying with the same. Having paid the fee earlier as per original Sub-rule (2) of Rule 4 and having enjoyed the privilege, it is not open to the petitioners to raise an objection with regard to the registration fee of approval of label. The Excise Act does not protect the process of approval of labels. Section 72 of the Excise Act authorises the Government to make rules for carrying out any purposes of the Act. The purpose of the Act in regulating the sale of intoxicant by importing it from a place outside the State is achieved by making the impugned rule. Previously the fee of Rs. 100/- per label for the purpose of approval was payable by the applicants according to Sub-rule (2) of

Rule 4. The same fee is now revised and under Sub-rule (2) of Rule 11 of the A.P. Foreign Liquor & Indian Liquor Rules and under Sub-rule (12) of Rule 66 of the A.P. Distillery Rules label fee of Rs. 25,000/- is introduced, under G.O.Ms.No. 187 dated 18-3-1991. The Government has got the power to amend the same. The State is entitled to stipulate its own terms for conferring on others the privilege to deal in liquors which is otherwise vested in it and in doing so if the State does not discriminate between the similarly situated persons but acts in furtherance of its prime objective to realise more and more revenue from an important source available to it, the State action is not vulnerable to attack from the standpoint of Article 14.

15. In this connection we may look to the definition of "manufacture". The word "manufacture" is defined in Sub-section (22) of Section 2 of the A.P. Excise Act, which is as follows:-

""Manufacture" includes every process, whether natural or artificial, by which any fermented, spirituous, or intoxicating liquor or intoxicating drug is produced, prepared or blended and also re-distillation and every process for the rectification of liquor."

Manufacturing process will complete after corking. It is just like a child who is born. When a child is born that child has to be identified by particular name. Similarly in the liquor or alcohol also, it has to be identified by affixing label. So the labelling is an important feature and labelling under any circumstances cannot be treated as the process of manufacturing and it is entirely different. When labelling is a separate part definitely it can be said that the State has got a right to collect the fee as it has parted with the right to deal in liquor with a separate brand. When such right is there, and when the Government felt it necessary to amend the rule keeping in view the present trend and increase in the establishment charges, and when the Government is vested with power u/s 72 of the Excise Act to amend a particular rule, it cannot be said that the amendments have been done with a view to increase the revenue. Whether it is for the increase of revenue or for parting with the exclusive right vested in the Government, it cannot have any influence particularly when we found that the right to sell a particular brand with a label which the State has got is parted in favour of a particular individual by obtaining amount in the name of fee. As already pointed out, none of the petitioners have demonstrated that the sales have fallen down after the increase of the label fee and that the customers are not upto the mark as they expected. On the other hand the revenue is being increased from time to time. The power to amend the rule during the currency of the licence also has to be admitted as the agreement itself contemplates that during the currency of the licence also the Government has got the power to enhance the same. When the parties knowing fully well about the terms of the agreement and having agreed for the terms of the agreement, this court feels that the petitioners shall be prevented from agitating that the Government cannot collect the enhanced fee during the currency of the licence. The

amendments under any circumstances cannot be said to be violative of Articles 14, 19 and 21 of the Constitution.

16. The power to amend a particular rule does not mean that it has to be exercised arbitrarily or high-handedly. It is a case where the authorities contemplated to enhance or introduce the fee, as the case may be, and started collecting the same without the support of any rule. We had an occasion to go through the file. Originally the Government thought of amending the rule but the Commissioner has raised an objection about the amendments of the rules and thereafter the Government has not taken any steps immediately. Consequently there is some time lag. Without taking proper and active steps, the Government wanted to collect the fee. They themselves have belated the matter. This shows the callous attitude on the part of the Government in collecting time enhanced rates without any authority when there is no timely action in the matter, they cannot be permitted to collect and ratify the same under the guise of amending the rule with retrospective effect. Power or right to collect the fees does not mean that the enhanced rates or the newly introduced rates, as the case may be, should be collected from the date of the intention on the part of the Government. Intention to amend does not mean that they can collect the enhanced rate. For collecting the amount with retrospective effect the Government has to come forward with genuine reasons supported by their timely and proper action. The file shows that they themselves are responsible for the inaction in taking early steps for which the licensees cannot be blamed or nor can they be asked to pay with retrospective effect for the delay on the part of the Government. The part played by the respondents in collecting the amended label fee is a clear indication that they want to apply the rule retrospectively without any reasonable basis. The mere fact of having power to amend the rule or an irregularity committed by the Government does not mean that it has got power to amend the rule with retrospective effect when there are no valid grounds to do so. In this case, we feel that the retrospective effect of the amended rules cannot be allowed to stand as the retrospective effect was given only to ratify their illegal action and therefore we feel that part of the Rule giving retrospective effect only has to be struck down. The G.O. amending the rules has to be given prospective effect from the date of its publication. Whatever amount that has been collected from the petitioners under the guise of the amended rules or otherwise till the date of G.O. has to be refunded to the respective petitioners, within three months.

17. In view of our above discussion, we hold that Sub-rule (2) of Rule 4 and Sub-rule (2) of Rule 11 of the Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 and Sub-rule (12) of Rule 66 of the A.P. Distillery Rules, 1970 and Rule 34 (11) of the A.P. Breweries Rules, 1970 as amended by G.O.Ms.No. 187, Revenue (Ex-III (2)) dated 18-3-1991 are valid prospectively and they do not offend Articles 14 and 19(1)(g) of the Constitution of India; but they cannot have any retrospective effect. The writ petitions are accordingly allowed in part. No order as to costs.

18. Immediately after the judgment was pronounced, the learned counsel for the petitioners makes an oral request for leave to appeal to the Supreme Court. In our considered opinion, no question of law muchless substantial question of law of general importance which requires to be decided by the Supreme Court, involves in this case. Hence, leave rejected.