

(1998) 04 GAU CK 0022

In the Gauhati High Court

Case No : Civil Rule No's. 228, 339, 372, 373, 375, 376, 377 378, 379, 380 and 381 of 1997 and C.R. No. 229 of 1996

Subrata Saha and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 265, 47
Tripura Excise Act, 1987 — Section 1, 18, 19, 2, 20
Tripura Excise Rules, 1990 — Rule 154

Citation : (1998) 3 GLT 93

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : M. Kar Bhowmik and A.L. Saha, for the Appellant; A. Chakraborty, A.G. and P.K. Paul, for the Respondent

Judgement

A.P. Singh, J.—In all these writ petitions, which have been filed by licence holders of Indian Made Foreign Liquor common questions of law have been raised. Whereas in Civil Rule Nos. 339, 372, 373, 375, 376, 377, 378, 379, 380, 381 of 1997 challenge has been posed to the legality of imposition of literage fees in addition to licence fee. In the remaining two writ applications, namely Civil Rule Nos. 229/96 and 228/97 challenge has been posed to revision of Excise (licence fee) by classifying the State of Tripura in 23 areas from its 4 districts vide notification issued on 27.5.96 (Annexure-A. 12 to the Civil Rule) and fixing proposed minimum reserved fee for financial year 1996-97 (Civil Rule No. 228/97) by orders passed under Rule 154 of Tripura Excise Rules, 1990 vide table filed as Annexure A. 13 to Civil Rule and as Annexure-R.3 to counter affidavit filed by the State Government of Tripura.

2. Except for minor details facts in all the writ applications, are virtually the same as all relate to same subject matter. Since there was no controversy on facts in these writ applications and all of them raise legal questions common to two groups stated above hence facts of the leading cases of each of the two group

need be stated only for appreciation of the legal questions raised in other cases of respective groups.

Excise Fees (Licence Fees):

3. There are only two cases in this group, namely C.R. No. 229/1996 and No. 228/1997. Since arguments were advanced by learned Counsel in Civil Rule No. 228/1997¹ take this as the leading case. The judgment in this will obviously govern Civil Rule No. 229/1996 also, therefore, a copy of this judgment would also be placed in that file.

4. Before proceeding further it is also necessary to notice that Petitioner in Civil Rule Nos. 228/97, 229/96 and Civil Rule No. 339/97 is the same person.

CIVIL RULE No. 228/1997.

The facts : 5. Petitioner who is also applicant in Civil Rule No. 229/96 entered into liquor retail vending business by virtue of grant of licence in his favour by the Collector, West Tripura, Agartala -Respondent No. 3 - in respect of a shop in West Tripura District at Mathchowmukhani, Agartala. Licence was granted in the year 1992 to be effective from 7.9.92 to 31.3.92 on payment of annual fee of Rs. 2000/- only. The licence was renewed and continued in the year 1993-94 but the licence fee was enhanced from Rs. 2000/- to Rs. 3000/-. The licence was again renewed and remained valid for the period from 1.4.1994 to 31.7.1994 and again from 1.8.94 to 30.9.94 and from 1.10.94 to 31.3.95 against licence fee of Rs. 10,000/-. Thus total licence fee paid from 1.4.94 to 31.3.95 worked out at Rs. 11,500/-. Licence fee, however, was enhanced from Rs. 11,500/- in 1994-95 to Rs. 20,000/- in 1995-96 which too Petitioner deposited for availing the licence for the financial year 1995-96. The licence was extended again for two months from 1.4.96 to 31.5.96 against the payment of Rs. 3334/- though as per prevailing rate of Rs. 20,000/- per year the fee for two months should have been Rs. 3320/- only. On 27.5.96 a notification was issued under Rule 154 of the Tripura Excise Rules, 1990, enhancing the licence fee from Rs. 20,000/- per year, the rate for 1995-96 thus was enhanced to Rs. 60,000/- per year for the financial year 1996-97 vide Annexure A.8 to the writ petition.

Points of challenge to the licence fee:

6. According to the Petitioner this enhancement is against the procedure/guideline provided by Rule 154 hence it is liable to be quashed.

Arguments by Petitioner's counsel:

7. Shri Shankar Deb, Senior Advocate, who appeared for the Petitioner made following arguments in support the reliefs claimed in the petition:

(a) Rule 154 as amended in 1991, 1996 and 1997 casts a duty on the Excise Commissioner to notify minimum reserved fee (hereinafter for the sake of brevity called MRF) for each shop having regard to the quantity of intoxicant estimated to be sold in the current year and/or the actuals of the proceeding three years in

the shop concerned but the Excise Commissioner has fixed the price under Clause (d) of Rule 154 taking average of the three proceeding years sale in Agartala Municipal area which is wholly illegal inasmuch as it does not reflect the correct position of the capacity/importance of the shop conjoined to transact business equal to the amount of the licence fee. Relying on the figures mentioned in the table appended to the notification (Annexure R. 3 to the counter affidavit) it was pointed out by Sri Deb that in Petitioner's shop at Math Chowmohani bearing shop code No. 10126 though average offtake per year as mentioned in Col. 7 is only Rs. 5,855.083 but the licence fee fixed for the shop is Rs. 60,000/- which is same for shops with higher average offtake upto Rs. 48,754/-. Sri Deb further contended that fixation of the proposed MRF at Rs. 60,000/- apart from being illegal on the ground of violation of the criteria provided in Clause (c) of Rule 154 it is also arbitrary and unreasonable hence violative of Article 14 of the Constitution of India in so far as it treats unequals as equals by fixing same licence fee which is payable by licence holders of shops with very high annual sale and by licence holders of shops with very low annual sale.

8. Arguments by Advocate General for Respondents:

Sri A. Chakravarty, Advocate General, assisted by Sri P.K. Paul, Government Advocate, in his reply argued that fixation of the MRF for 1996-97 is strictly in accordance with Rules and there has been no violation of Rule 154.

The Law:

9. Tripura Excise Act, 1987 and Tripura Excise Rules, 1990, made by the Government u/s 88 of that Act, hereafter referred for the sake of brevity respectively as the Act and the Rules, regulate the duties of excise in the State of Tripura. The Act is divided in ten chapters with 94 Section in all. Chapter I consists of 4 Sections. Sections 1 and 2 are introductory. Section 3 empowers the Government of Tripura to declare for the purpose of the Act, by a notified order what shall be "country liquor" and what will be "foreign liquor". Section 4 require issue of a notified order by the Government for whole of the State or for part thereof as to the amount of purchase of intoxicants which will be considered a retail sale and above that to be the sale by wholesale purchase. Chapter II relates to the Establishment of the Excise Department of the State Government. Section 5 makes the Collector incharge of the collection of the excise revenue and administration of excise in the district. With the power vested with the Government to appoint Excise Commissioner to be incharge of the administration of the provisions of the Act and Rules including collection of excise revenue in the State, he is however to work under the overall control of the State Government. The Government also is given the power to appoint various officers in the excise department at State and District level to aid the Commissioner of Excise and the Collector. The State is also authorised to delegate its powers, except the power to make Rules, to the Commissioner of Excise. Similar power is given to the Government to permit Excise Commissioner and Collector to delegate their

powers to any person. Section 6 make provision for appeal to Excise Commissioner against orders of the Collector. The power is reserved under the Section with the State Government to revise any order of the Collector or of the Commissioner or of any other officer.

10. Chapter III deals with the manner of transport, import and export of intoxicants in and from the State of Tripura. Chapter IV deals with manufacture, possession and sale of intoxicants. A complete ban has been imposed under Sees. 11 and 12 of this chapter on manufacture, possession and sale of any type of intoxicants without a licence granted for that purpose. Sections 18, 19, 20 and 21 of this Chapter deal with prohibition of sale by any one and grant of licence for sale. In Section 21 the Government has given the power to grant licence (exclusive privilege) on such terms and conditions and for such period as it may think fit for manufacturing, supplying by wholesale, supplying by retail sale any country liquor or intoxicating drug within a specified local area. Section 21 of this Chapter imposes a ban against transfer of the privilege by the person to whom such privilege has been granted by the State Government u/s 20 except with the approval of the Collector or the excise Commissioner and a licence has been granted to the transferee by the Collector/Excise Commissioner.

11. Chapter V of the Act contains provision dealing with power to impose duty on import, export, transport and manufacture of excisable articles. Chapter VI contains provisions relating to grant of licences, permits and passes. Sections 28 to 33 of this Section though have direct relation to grant of licence for consumption of spirit in the premises of the vendor but by virtue of Section 34 these provisions have application to grant of licence for retail sale of other intoxicants as well. Section 20 casts a duty on the Collector of the district to prepare a list of places (shops) for which licences for retail sale are to be given. This has to be done before expiry of the period of subsisting licences. Section 31 requires publication of the lists by the collector at the site of the shop with copy of the list to the Municipal authority and to publish the list in appropriate manner and the Chairman of the Municipality too is required to publish the list on the Municipal Notice Board and also to serve a copy on its members. Section 30 requires that time for preparation and publication of the list will be prescribed. Section 31 allows interested persons to file objections or give suggestions against the proposed shops being granted the licence. Section 32 requires the Collector to consider the objections/opinions and if found necessary by him to revise the list of shops etc. and to pass orders as to at what places licence for retail sale is to be given and accordingly grant the licence; the Collector has to then forward the proposals, the objections/opinions received against them, his order passed in that regard for confirmation or for variance as the case may be by the Commissioner of Excise u/s 33. Section 35 craves out exception from the procedure provided in Sections 28 to 33 in relation to licences granted for period which is less than a month or for sale of denatured spirit or where the grant of licence has been occasioned due to cancellation etc. of an already existing shop and in the matter of grant of licence for medical purposes. Section 36 provides

the power to the State Government to grant licence on payment of fee "such fee (if any)" on conditions and restrictions and in such form with such particulars as it may direct. u/s 37 power is reserved for prescribing the period for the grant of the licence. Section 38 obliges the licensing authority to obtain a counter part agreement from the licensee in conformity with the licence and to require the licensee to furnish security for the performance of the agreement or to require cash deposit in lieu of security as the licensing authority may decide. Section 39 provides that any defect or commission of technical nature in the grant of licence will be ignored. Section 40 gives power to the State Government to cancel or suspend the licence on any grounds as (a) unauthorised sub-letting or transfer of the licence, (b) non-payment of duty, (c) for breach of the terms of the licence, (d) if the licensee is convicted of an offence punishable by the Act or in other law in relation to revenue liability or in other offences of similar nature, (e) or for punishment in Customs Act, etc. the Section also bars a claim of compensation against cancellation etc. of the licence. Section 41 permits the licensing authority to withdraw with or without notice, any licence on grounds other than those provided for cancellation subject to right of licensee to claim compensation and refund of licence fee. Section 42 permits surrender of licence by licensee except where the licence is liable to be cancelled u/s 40. Section 43 bars the right of the licensee to get his licence renewed. Chapters VII, VIII and IX respectively deal with management of excise department by the Government, offences and penalties for violation of the provisions of the Act and the Rules, notifications or orders or of the licence etc. and the detection, investigation, trial and procedure to be followed for the same. Chapter X is the last chapter with miscellaneous provisions. Sections 88 and 89 deal with the power of the State Government to frame Rules and its publication. Sub-section (1) of Section 88 confers unfettered power on the State Government to frame Rules for carrying out objects of the Act. Sub-section (2) gives a long list of 44 subjects on which the Rules may particularly be made. Sub-section (2), however, before giving the list of 44 subjects clearly states "without prejudice to the generality of the foregoing provisions" which would obviously mean that Government has power to frame Rules not only on subjects enumerated in Clause (2) but also on any subject which it feels is necessary for carrying out the objects of the Act or for prescribing some fee, form etc. particulars for which necessity is felt from the provisions of the Act. Sub-clause (xxvii) of Clause (2) of Section 88 inter-alia provides the power to the State Government to make rule for prescribing the scale of fee or the manner for fixing the fees which may be payable by a licensee in respect of any exclusive privilege granted by the Government under Seq. 20 or licence etc. granted under the Act. Section 90 provides that licence fee and other excise dues if not paid will be recoverable as arrears of land revenue from the licensee or from the guarantor if there is one, by way of surety. Section 91 reserves power with the State Government to grant exemption from the provisions of the Act for the whole state or for some area as it things necessary. Sections 92 and 93 relate the bar of some suits and period of limitation in respect of some suits. Last Section deals with repeal of Bengal Excise Act, 1909,

which was a forerunner of the Act with saving clause.

12. In exercise of power u/s 88, the State Government framed Rules known as Tripura Excise Rules, 1990. For decision of this case reference is required to Rule 154. This rule was amended for the first time in 1991 and again in 1996. Since the arguments from Petitioner's side has been regarding non-compliance of this rule it would be necessary to quote the Rule in extenso alongwith its amendments referred herein above. It reads as follows:

154. The fees for licences for the retail vend of the following intoxicants shall be fixed by auction, subject to a reserved fee sanctioned in each case by the Excise Commissioner, and no sale shall be final unless confirmed by the later officer.

(1) Country Spirit.

Provided that:

(a) The Collector shall not be bound to accept the highest or any bid, he may exclude persons of notoriously bad character or who are reasonably suspected of having resorted to illicit practices and may refuse any did deemed to be reckless or purely speculative.

(b) in exceptional cases the Collector may, with the previous sanction of the Excise Commissioner, settle shops generally, or a particular shop by selection without auction.

13. This Rule was amended in 1991 vide revenue Department Notification No. F.I. 1(5)-EX/87 dt. 4.11.1991. By para 3 of Notification Rule 154 has been amended to include "India Made Foreign Liquor" after the words "Country Liquor" and Clauses (c) and (d) have been added to it. Para 3 of amending notification of 1991 reads as follows:

3. Amendment of Rule 154.

(i) In the Principal Rules, after Clause (i) of Rule 154 the following new clause shall be inserted namely:

(2) India Made Foreign Liquor.

(i) After Clause (b) the following new clauses shall be inserted namely:

(c) For settlement of shops on auction, the minimum reserved fee will be notified by the Excise Commissioner for each such shop keeping in consideration the quantity of the intoxicant estimated to be sold during the current year and/or the actuals of the preceding three years as the case may be.

(d) In case of settlement of a shop on selection basis, the annual licence fees shall be fixed by the Excise Commissioner with the approval of the Government which should not be less than the minimum reserved fees for a particular shop as determined under Clause (c) above.

14. Again by para 3 of Notification No. F.II-2(4)-EX/86(P.II) dtd. Agartala 24.5.1996 Clause (c) added in the Rule by November 1991 Notification was recast. Para 3 of the notification as amended in 1996 reads as follows:

(3) In Rule 154 of the principal rules for Clause (c), the following clause shall be substituted, namely:

(c) For settlement of shops on auction, the minimum reserved fee will be notified by the Excise Commissioner for each such shop keeping in consideration the quantity of the intoxicant estimated to be sold during the current year or the actuals of the preceding three years, in a business area to be notified by the State Government at the beginning of the every year.

Discussion

15. Rule 154 as it was originally made required fixation of licence fee of retail vend of country liquor by auction subject to a reserved fee sanctioned in each case (in each grant of the licence) by the Excise Commissioner and sale of the licence to be final only on his confirmation. Clauses (a) and (b) empowered the Collector to reject the highest bid for its being reckless or speculative or to exclude every bidder of doubtful character from bidding for the grant of the licence, or to settle the licence with previous sanction of Excise Commissioner without having resort to the auction sale only by selection.

16. By Clauses (c) and (d) added in November, 1991 the duty was cast on the Excise Commissioner to notify the minimum reserved fee both for auction sale or for selection for each shop which was to be fixed by him having regard to the quantity estimated to be sold during the year and or the actual quantity sold in the shop in the preceding three years subject to Government's approval in case where the licence is to be given by selection.

17. The impact of the introduction of item (2) India Made Foreign Liquor and addition of Clauses (c) and (d) in Rule 154 was that the system prevalent in the state for grant of licence for country spirit by auction sale or by selection also applied to grant of licence for India Made Foreign Liquor. Earlier there was no guideline provided for fixation of MRF but by Clause (c) introduced in the Rule by 1991 amendment guideline was provided and the MRF was required to be fixed for each shop (licence) having regard to the estimated sale in that shop in the concerned year or on the basis of the actual sale in that shop in preceding three years.

18. By the substituted Clause (c) introduced by the amendment notification of the year 1996 the Commissioner was required to notify the MRF for each shop having regard to the quantity estimated to be sold during the current year or the actuals of the quantity sold in the preceding 3 years in a business area.

19. As per the amended Clause (c) estimated quantity of the intoxicant likely to be sold in the shop or the actual quantity sold in that shop in preceding years no longer remained the criteria for fixation of MRF for the shop concerned. Now the

MRF had to be fixed for the shop having regard to the likely sale in the year in question or the sale of last 3 preceding years in the area where the shop was situated. This was a device perhaps to meet the unscrupulous licensee who scaled down their sales by one or the other manipulations so as to bring down the licence fee of the shop to a low amount. This method of fixation of the MRF protected the licensees of the same area who entered correct returns regarding sale of the intoxicants in these shops.

20. Sri Shankar Deb in his argument would however contend that notwithstanding the amendment of 1996 in Clause (c) of Rule 154, noticed herein above, the MRF for the shop has to be fixed by the Excise Commissioner having regard to the estimated quantity likely to be sold in the shop or on the basis of the actual sale in the shop in the last 3 years. According to Sri Deb since the requirement in Clause (c) of Rule 154 is to fix the MRF for the shop the requirements of the guideline provided for it has also to be in reference to the shop and not with reference to the area where the shop is located.

21. I do not find myself in agreement with the argument of Sri Deb. The suggestion given by Sri Deb is in clear contrast of the words used in the Rule as amended in 1996. Total purpose of 1996 amendment seems to be to omit the likely quantity of sale in the shop in the current year or actual sale of that shop in preceding 3 years for the purpose of fixation of the licence fee of the particular shop hence in the context of the words used in Clause (c) above, it is not possible to give it the meaning as per the suggestion of Sri Deb. Quantity of intoxicants likely to be sold in the shop in the current year or the quantity sold in the shop in three preceding years remained no longer the criteria for the fixation of the MRF under Rule 154 after substitution of Clause (c) in 1996 by the amending notification of 24.5.96.

22. Sri Deb then argued that if the Rule 154, as it now stands, is literally applied, it will be hit by Article 14 of the Constitution for being arbitrary, unreasonable and unrealistic inasmuch as unequals (shops with low sales) would, by the rule, be treated at par with those which are not in that category.

23. This argument of Sri Deb suffers from 2 flaws; viz:

(a) Article 14 of the Constitution has no application in the matter of fixation of consideration for the sale of goods which are in the exclusive domain of the State Government in respect of which the State has the exclusive privilege, and

(b) there is no violation of Article 14 inasmuch as placing shops situated in an area, in one category, is a reasonable classification which is permitted by the Constitution, irrespective of the fact that some of the shops in that area, are not at par with other shops of the area.

In reference to (a):

24. The Supreme Court has clearly ruled in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and earlier in Nagendra Nath Bora and

Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, that no individual has a right under Article 19 of the Constitution to trade in intoxicants and the State has the exclusive privilege to trade in the commodity. This view has further been affirmed by the Supreme Court in P.N. Kaushal and Others Vs. Union of India (UOI) and Others, , Nashirwar and Others Vs. State of Madhya Pradesh and Others, , and in the latest pronouncement in State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., and Beharilal Jaiswal v. C.I.T. (1996) 1 SCC P. 443.

25. Petitioner has been given the right to deal with the intoxicant (India Made Foreign Liquor) under a contract which has been concluded between him and the State Government of Tripura on his paying the consideration demanded by the State Government, which in the present case, has been fixed having regard to the manner provided in Rule 154. The question whether the amount which has been fixed by the State Government as the consideration payable to it for parting, in favour of licensee, of its exclusive privilege to trade in the prohibited commodity, is purely a matter of contract. It has no relation or connection with any right other than contractual right of the licensee. It is open to persons to bid for the licence on the terms which have been fixed by the Government for its grant. There is no element of compulsion in the matter.

26. Section 20 of the Act empowers the State Government to impose such conditions as it things-fit for granting the exclusive privilege either for manufacture, or for wholesale supply or for retail sale within any specified local area. This fully justified the imposition of identical terms and conditions for grant of exclusive privilege in a particular local area. Similarly Section 36 reserves with the Government absolute power to impose such conditions and fix such fee for the grant of licence as it may direct.

27. In the background of the above provisions (Sections 20 and 36 of the Act) there is hardly any scope for the argument that Clause (c) of Rule 154 as substituted by 24th May, 1996 amendment notification is unreasonable or violative of Article 14 for the faulty classification. In my opinion, the purpose which the Government had in mind to achieve was to hand down equal treatment to all the shops in an area so as to avoid unnecessary loss to the licensee of shop who is showing higher sale in his shop because if the licence fee for that shop in the area is higher than the licence fee of any other shop in the same area the commodity in the previous shop with higher licence fee would be sold costlier as compared to the same commodity in the shop of the area with lower licence fee. The placement of all shops in an area at par for fixation of the same MRF under Rule 154 in my opinion has a reasonable nexus with the object which the Government of Tripura sought to achieve by amending Rule 154 (c) in 1996. No fault can therefore be found with the legality of the Rule on the ground of Article 14 of the Constitution.

28. No other point was pressed by learned Counsel for the Petitioner.

29. In view of the above discussion, I uphold the impugned notification and the resultant demands as also the fixation of MRF for the shop with regard to estimated quantity of liquor likely to be sold in the current year or the quantity actually sold in the last 3 preceding years in the area where the shop in question is situated. Writ petition Nos. CR No. 228/97, No. 229/96 and No. 339/97 are accordingly dismissed.

30. Now coming to other writ petitions I find that the challenge in these writ petitions is confined only to imposition of literage fee which is a charge imposed in addition to the licence fee. The scale provided for the charge is Rs. 2/- per litre upto 30,000 litres and beyond 30,000 litres it is Rs. 10/- per 100 litres sold in excess of 30,000 litres, which comes to Rs. 00.10 per litre in case of sale over 30,000 litres and Rs. 2/- per litre if it is below or upto 30,000 litres.

31. Multipronged attack was launched against this impost by Sri Shankar Deb as also by Sri Kar Bhowmik, who are the Petitioner's counsel in the set of writ petitions concerned with the challenge of the impost of literage fee.

The grounds of challenge conversed by them may be summarised as follows:

(a) There is no provision in the Act or the Rules contemplating the impost hence it is unauthorised.

(b) notification imposing the charge suffers from vagueness as it does not define the charge or the word "literage".

(c) the impost is hit by Article 265 of the Constitution of India; and

(d) the provision, laying down lower scale of charge at the rate of Rs. 00.10 per litre in case where the sale exceeds 30,000 litres, militates against Article 47 of the Constitution inasmuch as instead of minimising consumption of intoxicating liquor the State Government of Tripura is promoting higher sale and higher consumption of liquor in the State.

32. The learned Advocate General tried to shut out the challenge to the impost on the ground that the impugned notification is not a new impost but is only a revision of the old rates. Referring to various documents within and outside the record Sri Chakravorty emphasised that the charge on literage on the basis of the sale turn over was an old phenomenon inherited by the State from the State of West Bengal, as the Excise Laws of that State were applicable in the state prior to the legislation by the State of Tripura on the subject. It was argued by Sri Chakraborty that in the background of the fact that the additional charge known as literage fee was in vogue since the beginning and that the Petitioners and all other licencees have been paying it from before the issue of the impugned notification hence the Court should refuse to entertain the belated challenge to its imposition and that too by few of the licencees who have approached this Court. According to the learned Advocate General out of 95 retailers only 10 have challenged the impost hence the long standing impost accepted by overwhelming majority of licencees should not be entertained.

33. Having examined the preliminary technical objection raised by the Advocate General, I do not see much force in it.

34. A fiscal impost if illegal, can be assailed at any stage specially when a higher burden has been created by revising the Rules. If an impost is ab-initio illegal, its illegality cannot be saved only because many affected by it have not questioned its legality or that the applicant himself had abided with the illegal demand made in pursuance of that illegal impost. Notwithstanding the fact that the literage fee was in vogue since long time and that all the licencees of the State, including Petitioner, paid the impugned fees without raising objection, Petitioners cannot be prevented from questioning its legality.

35. Preliminary objection raised by the learned Advocate General is accordingly rejected.

36. Now coming to the merits of the challenge posed to the impost of literage fee, I do not find much substance in the points urged on behalf of Petitioners in support of the challenge. I will now deal with the points raised serially.

37. Points (a) and (c) constitute a common ground hence can be dealt together. The argument on these points addressed by Sri Kar Bhowmik, is based on the assumption that the literage fee is being charged by way of tax. It was in this belief that the learned Counsel pressed in Service Article 265 of the Constitution of India in support of his challenge and case law by the Supreme Court on the cases concerning imposition of tax, duty etc.

38. In the earlier part of the judgment while discussing the point in connection with the challenge posed against enhancement of licence fee, it has been noticed that the State Government has the exclusive privilege in the trade/business of intoxicants and when it parts with that exclusive privilege while granting license either for manufacture or for sale, etc. it charges from the licensee an amount in the shape of consideration for parting with its exclusive privilege in favour of the licensee, but by virtue of grant of the licence the licensee acquires the privilege of trading in intoxicants in the manner and to the extent and on the terms and conditions as is indicated in the licence or in the agreement executed or under the Rules and regulations governing such grant of licence. In this circumstance the amount payable by the licensee for the grant of licence in his favour by the Government in the shape of licence authorising him to deal with and trade in the intoxicants is nothing but sale consideration and not in any case a tax. Hence the principles which are applicable either in the Constitution or in the general law regarding imposition and collection of tax have no application whatsoever in the fixation and collection of excise fee referred to in Sections 20 and 36 of the Act as also in Rule 154 of the Rules.

39. In my opinion, words "the State Government may grant to any person, on such conditions ... as it may think fit" occurring in Section 20 of the Act are wide enough to cover imposition of any fee or any amount, by whatever name called, for the grant of the exclusive privilege to private persons by the Government for

trading in intoxicants. Similarly Section 36 offers sufficient power to the State Government in this regard. The words "on payment of such fee, if any." and "as the State Government may direct" in Clause (a) and (b) thereof stand in good stead to support the imposition, and enhancement of the rate of the literage fee or of any other charge such as licence fee. Literage fee or any charge whichever is imposed and leviable by the State Government for grant of exclusive privilege in favour of a trader is essentially a charge payable to the Government by way of consideration for parting with its exclusive privilege; it is nothing but additional consideration over and above the licence fee, which has been referred to under Rule 154 of the Tripura Excise Rules. In my opinion, both licence fee and literage fee come within the ambit of the amount which the Government entitled to charge for parting with its exclusive privilege. None of the two constitute tax hence no valid objection can be raised against its imposition in the belief that it is a tax.

40. Principles governing the levy or collection of tax, except by authority of law as envisaged under Article 265 of Constitution, to my mind have no applicability at all to the imposition of licence fee or the literage fee by the State Government which is by way of consideration for the grant of licence for dealing with intoxicants under Sections 20 and 36 of the Act read with Rule 154 of the Rules.

41. Nothing has been pointed out by the learned Counsel for the Petitioner as to how the term literage fee under which the additional charge by way of additional licence fee is being made by the Government is vague or uncertain. From the impugned notification and from the impose which is already in vogue from before it is absolutely clear that the fee is payable on the quantity of intoxicants sold by retailers in his shop, whereas licence fee is payable at the time of the grant of licence. Literage fee is payable after the total sale turn over of the licensee is worked out at the close of the licensing year. It is charged at the rate of Rs. 2/- per litre upto the sales of 30,000 litres and beyond that it is charged at the rate of Rs. 00.10 per litre in excess of 30,000 litres. This may be for giving impetus to shop keepers concerned for correctly recording their sales in their registers. The Petitioner has not been able to spell out any difficulty which may have been faced by him in the payment of literage fee over the years since after the grant of licence in his favour though the imposition of literage fee has been in vogue from before and Petitioner has been paying it from before he challenged the same by means of the present writ petition. Even at the bar learned Counsel for the Petitioner has not been able to spell out as to what precise difficulty was being encountered by Petitioners of the respective writ petitions in the payment of the literage fee. The very fact that Petitioners have been paying literage fee from before the enhancement of the rate fully bears out that there has not been any confusion or vagueness in the matter of imposition of literage fee. To say that the word "literage fee" is not capable of being understood for being vague by itself without spelling out the reasons cannot be good ground for the Court to nullify the charge on that head. The agreement has not been carried out to its logical and hence the argument, which lacks substance, is accordingly turned

down.

42. Another aspect in this connection is worth noticeable. It is contended by Sri Kar Bhowmik that by curtailing the rates from Rs. 2/- per litre to Rs. 00.10 per litre when the sale exceeds 30,000 litres the Government is giving impetus to the licensee to sell maximum amount of intoxicants which is violative of the prohibition clause under Article 47 of the Constitution. This contention is thoroughly misconceived. Article 47 of the Constitution casts duty on the State to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health. In the State of Tripura the Government has not issued any notification for imposition of prohibition. Tripura State is a wet state and not a dry state. MRF fixed for a shop by the State Government has relation to the shop's capacity to sell intoxicants in a particular excise area. No material has been field on record of the writ petitions on behalf of the Petitioner and none is otherwise available on the record to indicate that due to the scalling down of rate of additional fee known as literage fee which is payable by the licensee over and above licence fee fixed under Rule 154 of the rules has at all resulted in the excessive sale of intoxicants in any shop of a particular area. In my opinion, the reduction of the fee by scaling it down from Rs. 2/- per litre to Rs. 00.10 per litre beyond the level of 30,000 litres does not at all militate against the Directive Principles of State Policy under Article 47 of the Constitution.

43. The argument advanced by Mr. Kar Bhowmik in this regard has no merit, which is accordingly rejected.

44. No other point in support of the writ petition relating to the challenge of imposition or enhancement of literage fee was urged by the learned Counsel for the Petitioner.

45. Before ending the judgment, it may be pointed out that Sri Kar Bhowmik cited several decisions all of which related to the imposition of tax, for supporting his argument that imposition of literage fee without defining the word and without authority being clearly spelled out in the Act or in the Rules justifying such imposition is illegal. In the background of the view already taken by me in the earlier part of the judgment that literage fee is not a tax but an additional demand of licence fee which is justified u/s 20 as well as in Section 36 of the Act, the rulings cited by Sri Kar Bhowmik have no relevance to the imposition of literage fee. No direct case law has been cited which could require reference and discussion in this judgment. I, therefore, do not consider it at all necessary to deal with those judgments/citations which were cited at the bar by Sri Kar Bhowmik.

46. Sri S. Chakravorty, learned Advocate General placed reliance on the judgment of learned Single Judge passed in the Civil Misc. Case No. 426 of 1997 (in Civil Rule No. 372 of 1997) and other connected cases dated 5.8.1997 wherein the Single Judge was pleased to reject Petitioner's prayer for granting the stay order. According to Sri Chakravorty by a detailed order passed in that

context the learned Judge had discussed each and every aspect of the matter and after being dissatisfied with the merits of the challenge made against the imposition of fee by the Petitioner he rejected the application. Hence the said judgment is relevant for the purpose of rejecting the challenge posed against imposition of fee by the Petitioner.

47. I am not inclined to accept the submission made by the learned Advocate General. The judgment on which reliance has been placed is not a judgment delivered on the merits of the challenge posed to the imposition of the literage fee in the writ petition. The judgment at the most can be considered as an order rejecting the prayer for an interim order and as such the judgment cannot therefore be pressed into service by way of an authority against the Petitioners. I therefore do not consider it at all appropriate to deal with the judgment cited by Sri Chakravorty though I fully agree with the views expressed in the said judgment.

48. In the result, the writ petitions fail and are accordingly dismissed.

49. Civil Rule No. 372/97 will be the leading case for the second batch of the writ petitions relating to the challenge posed against imposition or enhancement of the scale of literage fee. A copy of the judgment shall however be kept on the files of other writ petitions and the judgment in Civil Rule No. 372/97 will govern the connected writ petitions in this group.

50. The State Government of Tripura will be entitled to payment of cost against the Respondents. In case any amount has not been paid either by way of licence fee or by way of literage fee by any of the Petitioners, because of pendency of these writ petitions, same shall be payable by the Petitioners to the State of Tripura with interest at the rate of 18% per annum, which shall be chargeable from the date it became due till the date of its payment.