

# SUPREME COURT OF INDIA

Government of Maharashtra and Ors.

Versus

M/s. Deokar's Distillery

10.3.2003

(V.N. Khare C.J.I., S.B sinha and A. R. Lakshmanan J.J. )

Civil Appeal No. 7399 of 2001 with C.A.No. 74000 2001 and 1302 of 2003

## JUDGMENT

**A. R. Lakshmanan, J. :-** These three appeals are directed against the final judgment and order passed by the High Court of Judicature of Bombay in Writ Petition Nos. 3754/2000, 3753/2000 and 3898/2000. The common questions that arise in these appeals are as to whether the State of Maharashtra is empowered to charge from the liquor licensees, under the Bombay Prohibition Act, 1949 (hereinafter referred to as "the Prohibition Act"), at whose premises Government staff is posted for supervision as per the provision of Section 58A, are governed by the Maharashtra Civil Services (Revised Pay) Rules, 1998 and other rules, resolutions made by the State Government under the power vested in it by the provision to Article 309 of the Constitution, to fix the pay and other allowances of its employees, for levy and recovery of the cost of supervision to be paid to the State Government as contemplated under Section 58A of the Act or not ? The further question may also arise as to whether the Commissioner is entitled to recover the supervision charges retrospectively and raise demands for, *inter alia*, arrears of supervision charges as per the circular letter No. SUC 1091/197/Revised/1.1.96/13-A dated 30.7.1999 for carrying out provisions of Section 58A and 114 of the Prohibition Act and carrying out an executive function under Article 162 of the Constitution and/or a lawful order under the Act, falling under Section 458A and 114 of the Prohibition Act or Rule 17(43) of the Rule of 1966 and Rules 6(36) of the Rules of 1973 ?

2. The respondent are holding a licence in Form P.L.L. for manufacture of Indian made foreign liquor, prescribed under the provisions of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966(hereinafter referred to as "the Rules of 1966") and also holds a licence in Form C.L.I. prescribed under the provisions of the Maharashtra Country Liquor Rules, 1973 (hereinafter referred to as "the Rules of 1973") for manufacture of Country liquor, made under the provisions of the Prohibition Act. All transactions pertaining to receipt, transport, storage of spirit and manufacture, bottling and issues of the liquor manufactured are required to be under excise supervision under both of the aforesaid sets of Rules. Under Section 58A of the Prohibition Act, the State Government is empowered to permit the manufacture and other related activities in respect of any intoxicant under the supervision of exercise staff and the cost of such staff is to be paid to the State Government by the manufacturer. The cost of such staff is required to be paid to the State Government by the licensee in advance as per sub rule (12) of Rule 17 of the Rules of 1966 and

sub-rule (12) of Rule 6 of the Rules of 1973. The pay scales and other allowances of Government employees are fixed by the State Government by issue of Rules and Government Resolutions under the power vested in it by the provision to Article 309 of the Constitution of India. The Commissioner as empowered by the State Government, issues circulars for levy and recovery of supervision charges based on the pay scales and other allowances of the Government employees fixed by the State Government under the Rule and Government Resolutions made under Article 309 in respect of the excise staff posted for supervision. Demand notices were issued by appellant No.4 - the Sub-Inspector of State Excise to the respondents to pay the differential amounts of cost of supervision on account of revision of pay-scales with retrospective effect ordered vide Government Notification, Finance Department dated 10.12.1998, as per the revised pay scales for one Sub-Inspector and two constables. By the aforesaid Notification, the State of Maharashtra had promulgated, under the power vested in it by the proviso to Articles 309 of the Constitution, the Maharashtra Civil Services (Revised Pay) Rules, 1998 (hereinafter referred to as "the Rules of 1998"), whereunder the pay scales of Government employees were revised and fixed with retrospective effect from 1.1.1996. It was pointed out that because of the increase in the cost of supervision with effect from 1.1.1996, vide aforesaid Notification dated 10.12.1998, on account of revision of pay scales and transport charges of the employees posted for supervision, it was necessary to increase the said charges, which should be paid by the respondent within 15 days. The respondent, vide his letter dated 2.3.1999, informed the Sub-Inspector that he had already paid the supervision charges in advance, he would not be able to pass on the burden of the differential amount to his purchasers and that he was not liable to pay the differential amount. By reminder letter dated 24.3.2000, appellant No. 4 rejected the reply of the respondent and directed him to pay the differential amount. The respondent questioning the above letter, preferred Writ Petition No. 3754/2000 in the Bombay High Court contending that, *inter alia*, in view of the decision of this Court in ***Polychem Ltd. and Anr. v. State of Maharashtra & Ors.*** reported in (1998) 6 SCC 196, the demand notice was liable to be quashed and set aside. The appellants filed a reply to the writ petition and denied the contention of the respondent herein. The writ petition came up for admission before the High Court and the learned Judges observed that they were allowing the petition at the stage of admission itself in view of the judgement in Polychem's case (supra), without considering the submissions of the appellants that on certain facts and aspects the ratio of the Polychem judgment was not applicable to the case of the respondent, as set out in the affidavit in reply. However, learned counsel appearing for the respondents herein, contended before the High Court of Bombay that the challenge sought to be raised by them to the impugned demand notices has already been concluded in their favour in the case of ***J.E. Bilimoria & Sons v. State of Maharashtra & Ors.*** reported in 1999 Mh.L.J. (II) 1079, wherein a similar issue was considered by the Division Bench and it was held therein that the demand notice of the differences of the supervision charges with retrospective effect was without jurisdiction. Thus, the notice in that case was quashed and set aside. Learned counsel further contended that the aforesaid judgment of the High Court of Bombay in J.E. Bilimoria case (supra) has been confirmed by this Court in the case of Polychem (supra) wherein this Court was pleased to hold that the payment of supervision charges with retrospective effect was without jurisdiction and the impugned demand of difference of supervision charge retrospectively could not be sustained. Learned counsel appearing for the respondents therein (appellants herein) contended that the judgment of the Division Bench of the Bombay High Court in the case of J.E. Bilimoria (supra) was no longer a good law in view of the Full Bench judgment of the said Court in the case of ***Mohan Meakin Ltd. Anr. v. The State of Maharashtra & Ors.*** reported in 1993 Mh.L.J (I) 13. The Full Bench while resolving the conflict did not approve the view taken in the case of J.E. Bilimoria (Supra) and overruled the same and confirmed the view of another Division Bench of the High Court of Bombay in the case of ***Gustad Mayur Irani v. The State of Maharashtra*** reported in

1991 (51) ELT 232 (Bom.) [W.P. No. 940/1982]. It was, therefore, submitted that the ratio of the decision in J.E. Bilimoria's case (supra) has no application in the facts and circumstances of the present case. It was further contended that under Section 58A of the Prohibition Act, the State Government has the power to recover from a licensee a cost of the Staff appointed to supervise the licensed premises for exercise purposes. The Maharashtra Foreign Liquor (Storage in Bond) Rules, 1964 (hereinafter referred to as "the Rules of 1964) also provide that the State Government can recover from the licensees the cost of Staff appointed at the licensed premises/bonded warehouse for excise supervision. It was further urged that Condition No. 3 of the licence requires the petitioner to pay such amount of cost as determined by the respondents, appellants herein, in advance before the beginning of every quarter. The condition is merely for administrative convenience and it does not prevent the State Government from recovering the cost of such staff subsequently, especially when both Section 58A of the Prohibition Act as well as Rule 7 of the 1964 Rules do not prescribe any time within which such cost has to be recovered. It was further contended that in view of the application of recommendations of the Fifth pay Commission, the Dearness Allowance and other emoluments payable, *inter alia*, to such supervisory staff have been increased with effect from 1.1.1996 and the cost of supervision charges has proportionately gone up and this is to be recovered from the licensee. It was further submitted that the increased cost, however, has to be determined from 1.1.1996 because of the retrospective raise granted to the staff by the Government and that the licensees do not have any say in the salary and other emoluments paid to such staff. It was also contended that under Section 58A of the Prohibition Act and the relevant Rules, there is a clear existing statutory liability on the licensees to pay the cost of the supervisory staff and what is sought to be recovered from the respondents herein is the increased cost of such supervision which has been taken place from 1.1.1996 and the demand was made when the cost increased.

3. The Division Bench held that the case on hand is squarely covered by the decision of the Bombay High Court in J.E. Bilimoria's case (supra) and that the view taken by the Bombay High Court has been confirmed by this Court in Polychem's case (supra) wherein it was held that the State Government is not empowered to collect supervision charges with retrospective effect under the Prohibition Act. The Division Bench held that they are bound by the aforesaid view taken by this Court and, therefore, they have no other alternative but to quash and set aside the demand notice issued by respondent No. 4 dated 22.3.2000 and 19.2.2000 in W.P. No. 3753/2000 and W.P. No. 3754/2000 respectively. The writ petition was allowed and the rule made absolute in terms of prayer clause (a) in both the petition with no order as to costs.

Aggrieved by the orders passed by the Bombay High Court in the above writ petitions, these appeals by way of special leave petition were filed by the Government of Maharashtra and others reiterating the contentions raised before the Bombay High Court.

4. We heard Mr. Soli J. Sorabjee, learned Attorney General, appearing for the appellants and Mr. V.B. Joshi, learned counsel, appearing for the respondents.

5. The learned Attorney General submitted that the High Court erred in solely relying upon the judgment passed by this Court in the case of Polychem (supra) without considering the distinguished facts and circumstances, as submitted by the appellants in the case of the respondents and without considering certain other decision of this Court on the basis of which these appellants had submitted that the ratio of Polychem's judgment was not applicable to the case of the respondent. He further submitted that the High Court erred in not appreciating the proper effect of the concerned provisions and direction under the Act and under the Constitution which have to be considered together with relevant statutory provisions and the consequential directions. The learned

Attorney General invited our attention to Section 11, 12, 13 and 49 of the Act, which read as under :

"11. Notwithstanding anything contained in the following provision of the this Chapter, it shall be lawful to import, export, transport, manufacture bottle, sell, buy, possess, use or consume any intoxicant or hemp or to cultivate or collect hemp or to tap any toddy producing tree or permit such tree to be tapped or to draw toddy from such tree or permit toddy to be drawn therefrom in the manner and to the extent provided by the provisions of this Act or any rules, regulations or orders made or in accordance with the terms and conditions of a licence, permit, pass or authorisation granted thereunder.

12. No person shall -

- (a) manufacture liquor;
- (b) construct or work any distillery or brewery;
- (c) import, export, transport or possess liquor, or
- (d) sell or buy liquor

13. No person shall -

- (a) bottle any liquor for sale,
- (b) consume or use liquor; or
- (c) use, keep or have in his possession any materials, still utensils, implements or apparatus whatsoever for the manufacture of any liquor.

49. Notwithstanding anything contained in this Act, the State Government shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using any intoxicant, hemp or toddy, and whenever under this Act or any licence, permit, pass, thereunder any fees are levied and collected for any licence, permit, pass, authorisation or other permission given to any person for any such purpose, such fees shall be deemed to include the rent or consideration for the grant of such right or privilege to the person by or on behalf of the State Government."

6. Our attention was also drawn to sub-section (1) of Section 114, sub-Section (1), Clause (u) of sub-section (2) of Section 143 and Section 58A of the Prohibition Act prior to 18.5.1998 which run as follows;

"114(1) All duties, taxes, fines (except fines imposed by a Court) and fees leviable under any of the provisions of this Act or in respect of any licence, permit, pass or authorisation granted under it, and the cost of the supervising staff appointed under Section 58-A, may be recovered from any person liable to pay the same or from his surety, if any, as if they were arrears of land revenue.

143(1) The State Government may make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenues.

(u) prescribing the fees (including rent or consideration) payable in respect of any privilege, licence,

permit, pass or authorisation granted or issued under this Act.

58A. The State Government may by general or special order direct that the manufacture, import, export, transport, storage, sale, purchase, use collection or cultivation of any intoxicant, denatured spirituous preparation, hemp, mhowra flowers, or molasses shall be under the supervision of such Prohibition and Excise or Police staff as it may deem proper to appoint, and that the cost of such staff shall be paid to the State Government by the person manufacturing, importing, exporting, transporting, storing, selling, purchasing, using, collecting or cultivating the intoxicant, denatured spirituous preparation, hemp mhowra flowers or molasses :

Provided that, the State Government may exempt any class of persons or institutions from paying the whole or any part of the cost of such staff."

7. It is useful, in this context, to refer to the relevant Rules, which read as follows.

"2(3) "Excise supervision" means the supervision of foreign liquor in relation to its receipt, issues, transport and storage in bond by member of the staff other Prohibition and Excise Department appointed in that behalf by the Commissioner.

7. Appointment of staff - The Commissioner may appoint such staff at the bonded warehouse for excise supervision as he deems necessary and the cost of such staff shall be paid to the State Government by the licensee as provided by an order under Section 58A of the Act."

CONDITION NOS. 3, 10 11, & 12 OF THE LICENCE IN FROM B.W.1 GRANTED UNDER THE RULES OF 1964 :

3. The licensee shall pay to the Government in advance, at the beginning of each quarter commencing from the date of the licence, such cost of the staff appointed at the licensed premises for the purpose of excise supervision as may be fixed by the Commissioner from time to time.

10. No foreign liquor shall be removed by the licensee from the licensed premises for consumption within the State, except with previous permission of the Collector, in writing and on payment, of excise duty and fees, and under a pass granted under the Maharashtra Foreign Liquor (Storage and Supply) Regulations, 1964.

Provided that, foreign liquor be removed in bond by the licensee from his licensed premises for supply to another licensee holding a B.W.1 licence in the State, under a pass granted by the Collector under the Maharashtra Foreign Liquor (Storage and Supply) Regulations, 1964.

11. The licensee shall abide by the conditions of this licence and the provisions of the Bombay Prohibition Act, 1949, and the rules, regulations and orders made thereunder.

12. The licensee shall obey all lawful orders issued from time to time by the Commissioner, the Collector or the Superintendent of Prohibition and Excise.

The inaugural part of the Maharashtra Civil (Revised pay) Rules, 1998.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Government of Maharashtra is pleased to make the following rules namely;

1. Short title :- These rules may be called the Maharashtra Civil Services (Revised Pay) Rules, 1998.

Sub rule (12) of Rule 17 of the Rules of 1966 :

All transactions pertaining to the receipt, transport, storage of spirit and manufacture, bottling and issues of potable liquor shall be under excise supervision. The Director may appoint such staff at the manufactory for excise supervision as is considered necessary and the cost of such staff shall be paid to the State Government by the licensee annually in advance.

Sub-rule (12) of Rule 6 of the Rules of 1973 :

All transactions pertaining to the receipt, transport and storage of spirit and country liquor and manufacture, bottling and issues of country liquor shall be under excise supervision. The Commissioner shall, according to the direction made under Section 58A of the Act by the State Government. station such staff at the manufactory for excise supervision as is considered necessary and the cost of such staff shall be paid to the State Government by the manufactory/licensee quarterly in advance.

Sub-rule (43) of Rule 17 of the Rules of 1966 under which the licence in Form P.L.L has been granted to the respondent reads as under :

The licensee shall abide by all rules, regulations and orders made from time to time under the Act.

Under sub-rule (1) of rule 15 and sub-rule (2) of Rule 16 of the Rules of 1966, the applicant/licensee, has to give following undertaking in the application for grant or renewal of the licence to manufacture liquor, in the application in Form P.L.A. prescribed under the Rules of 1966 for grant/renewal of the licence. :

I/We agree to abide by the terms and conditions of the licence which may be granted/renewed, and the provision of the Bombay Prohibition Act, 1949 and the rules, regulations and orders made thereunder.

Sub-rule (36) of the rule 6 of the Rules of 1973 :

6(36) A manufactory/licensee shall abide by all rules, regulations and orders made from time to time under the Act.

In the application from C.L.A. prescribed under rules 3(1) and 4(2) of the Rules of 1973, for grant/renewal of the C.L.I. licence, the applicant/licensee has to give the following undertaking :

4. I/We agree to abide by the terms and conditions of the licence which may be granted/renewed, and provisions of the Bombay Prohibition Act, 1949, and the rules, regulations and orders made thereunder.

Condition No. 17 of the licence in Form C.L.I. prescribed under the Rule of 1973, which is granted to a manufacturer of country liquor;

The licensee shall abide by the conditions of this licence and the provisions of the Bombay Prohibition Act, 1949, the rules, regulations and orders made thereunder and shall give an undertaking to that effect in Form C.L.XX.

Undertaking in Form CL.XX prescribed under condition No. 17 of the licence in Form C.L.I. prescribed under the Rules of 1973 :

I/We.....hereby undertake to abide by the conditions of the licence in Form C.L.I. that may be granted/renewed in my/our favour and the provisions of the Bombay Prohibition Act, 1949 and the Maharashtra Country Liquor Rules, 1973 and other relevant rule, regulations and orders made thereunder from time to time.

Signature of the licensee/applicant"

8. Learned Attorney General drew our attention to the Notification dated 10.12.1998 issued by the Finance Department of the Government of Maharashtra which runs as follows.

*"GOVERNMENT OF MAHARASHTRA*

*FINANCE DEPARTMENT*

*Mantralaya, Mumbai 400 032, dated 10th December, 1998*

*NOTIFICATION*

No. RPS 1298/C.R. 13/98/SER-10 - In exercise of the powers conferred by the provision to Article 309 of the Constitution of India, the Governor of Maharashtra hereby makes the following rules, namely :-

1. Short title and commencement.

(i) These rules may be called the Maharashtra Civil Services (Revised Pay) Rules, 1998.

(ii) That shall be deemed to have come into force on the 1st day of January, 1996"

9. Learned Attorney General contended that the High Court of Bombay erred in not appreciating the true nature of the levy and recovery of supervision charges and of the transaction between the State Government and the licensee in respect of levy and recovery of supervision charges under Section 58A of the Prohibition Act. He further submitted that the basis on which the levy on cost of supervision was governed and the nature of the levy and recovery through executive orders were not put in issue in Polychem's case(supra). It also does not appear to have been brought to the notice of this Court that the pay scales which were revised with retrospective effect under the Maharashtra Civil Services (Revised Pay) Rules, 1998 (hereinafter referred to as "the Rules of 1998") were made by the State of Maharashtra under the powers vested in it by the proviso to Article 309 and the levy and recovery of cost of supervision from the licensee was through executive instruction based on the aforesaid Rules of 1998. It was also submitted that the question as to whether the word "cost" was used in Section 58A of the Prohibition Act as meaning "fee" in the technical sense was not canvassed in the Polychem's case (supra). According to the learned Attorney General, to recover the cost of supervision as per the pay scales of its employees from the licensees is an executive function of the State Government under Section 58A of the Prohibition Act and Article 162 of the Constitution, which is carried out by issuing circular letter dated 30.7.1999 issued by the Commissioner and, therefore, it is not a case of any legislation imposing liability with retrospective effect by a delegated authority.

10. It was argued that the licensees were well aware that they have to pay additional amounts periodically at least about once or twice in a year on account of retrospective revision of various allowances and which they had paid and, therefore, factually there was no effective representation to the licensee that the cost of supervision charges for the incoming quarter was fixed for the said quarter and will not be increased with retrospective effect. Quoting the circular letters, it was argued that the said letters establish that there was no question of any remote circumstance of increase in cost of supervision with retrospective effect in the case of the respondent including other licensee and, therefore the High Court has erred in applying the ratio of the Polychem's case (supra) to the case of the respondent on the facts of the case submitted for consideration with reference to the above quoted circular letters according to which recovery of additional amounts towards arrears of supervision charge was effected during the previous years.

11. Learned Attorney General further submitted that the respondent was not and is not prevented from recovering this additional cost from his further sales as observed by the Full Bench of the Bombay High Court in paragraph 13 of the judgment in Mohan Meakin's case (supra) and which view was not before this Court in the case of Polychem (supra) and, therefore, the High Court ought to have appreciated that ratio of the Polychem's judgment (supra) was, therefore, not applicable to the case of the respondent on facts as well as in law.

12. Learned Attorney General, in support of his contentions, placed strong reliance on the following judgments :

**1. Government of Andhra Pradesh v. M/s Anabeshahi Wine and Distilleries Pvt. Ltd. reported in (1988) 2 SCC 215 (delivered on 16.2.1988)**

**2. J.E. Billimoria & Sons v. State of Maharashtra & Ors. reported in 1990 Mh. L.J. (II) 1079 (delivered on 1.8.1989).**

**3. Gustad Mayur Irani v. State of Maharashtra & Ors. reported in 1991(51) ELT 232 (Bom.) (delivered on 12.9.1990).**

**4. Mohan Meakin Ltd. & Anr. v. State of Maharashtra & Ors. reported in 1993 Mh. L.J. (I) 13 (Full Bench judgment delivered on 8.9.1992).**

**5. M/s Vidarbha Wine Traders v. State of Maharashtra & Ors. delivered by the High Court of Bombay on 24.2.1994.**

**6. Order dated 5.9.1994 passed by this Court in S.L.P. (C) No..../ 1994 (CC26531) (Vidarbha Wine Traders and Ors. v. State of Maharashtra).**

**7. Polychem Ltd. & Anr. v. State of Maharashtra & Ors. reported in (1998) 6 SCC 196 (delivered on 4.8.1998)**

13. Placing reliance on the above cited rulings, the learned Attorney General, submitted that the High Court ought to have appreciated that the judgment of this Court in Polychem's case was required to be read with the decision of the Full Bench of the High Court in Mohan Meakin's case in which the earlier decision in J.E. Bilimoria's case was overruled on entirely different reasons than those given in the judgment of the High Court in Gustad Mayur Irani's case, in Writ Petition No. 2718/1991 - M/s Vidarbha Wine Traders v. State of Maharashtra & Ors. and order dated 5.9.1994 of

this Court rejecting the Special Leave Petition (c) No.../ 1994 (CC 26531) filed by M/s Vidarbha Wine Traders and 15 other licensees. It was further submitted that the various reasons in Mohan Meakin's case upholding the demand for recovery of differential amounts of supervision charges were not rejected on the basis of any discussion by the High Court in the impugned judgment.

15. Before proceeding further to consider the rival submissions, it would be beneficial to consider the various judgments cited by the learned Attorney General in its chronology. The first in the series is the judgment of this Court in the case of M/s Anabeshahi Wine and Distilleries Pvt. Ltd. (supra). In this case, the respondent-Distillery obtained a distillery licence under the Andhra Pradesh Distillery Rules, 1970 and has been carrying on the business of manufacture and sale of wine and other allied products. The excise authorities posted one Inspector, one Sub-Inspector and four Constables at the respondents premises and required the respondent to pay their salaries and allowances etc. in pursuance of Section 28(2) of the Andhra Pradesh Excise Act, 1968. The respondent-Distillery having failed to get any redress, filed writ petition challenging the demand on various grounds. The contentions raised on behalf of the respondent-Distillery found favour with the High Court which, by the judgement appealed against allowed the respondent's writ petition. In this Court, it has been urged by the State Government that the High Court committed an error in appreciating the true nature of the demand and the demand was in the nature of price of parting with the privilege - which privilege exclusively vested with the Government. Having considered the respective submission, this Court accepted the submission made by learned counsel for the appellant-State. Before this Court it has not been disputed that the business which the respondent has been carrying on could not have been carried on by it unless licence has been granted to it under the said Act and the Rules. This Court, after considering the rival submissions, observed in paragraph 5 which runs as follow '

"The perusal of the aforesaid provisions of the Act and the Rules leaves no manner of doubt that it was open to the appellant to grant the exclusive privilege of manufacturing and selling wine etc. to the respondent only provided it was, apart from taking any other payment, also willing to pay the salaries and allowances referred to in the aforesaid provisions which for the sake of convenience have been described as establishment charges, and which were sought to be recovered as such under the impugned notice of demand. The respondents was not under any obligation to take the licence. It was open to it to have refrained from taking any licence under the Act and the Rule if it was not willing to pay the price as require by the Government for the grant of privilege to manufacture and sell intoxicants. The nature of the payment which a licensee such as the respondent is required to make to the State by reason of the State parting with the privilege in regard to manufacture sale etc. of intoxicants came up for consideration before a Constitution Bench of this Court in Har Shankar v. Deputy Excise and Taxation Commissioner. It was held that the amount charged to the licensees are neither in the nature of tax nor excise duty, but constituted the price or consideration which the government charges to the licensees for parting with its privileges and granting them to the licensees."

16. In the case of J.E. Bilimoria (supra), the judgment was delivered on 1.8.1989 by the Negpur Bench of the Bombay High Court. Seventeen writ petition were filed challenging the authority of the respondent-State to recover excise duty on breakage caused in transit or in the Bonded Warehouse, by recourse to the circulars issued by the Commissioner of Prohibition and Excise and the difference in the supervision charges leviable under Section 58A of the Prohibition Act. With regard to the supervision charges, it was urged that Section 58A of the Prohibition Act vested the State Government with the power of imposing supervision charges in respect of the goods mentioned therein by the persons who were engaged in the concerned activity, and since Section

58A of the Prohibition Act imposed the liability, it was open to the State Government to vary the quantum, taking into account the circumstances, and it was not necessary to have a clear provision for recovering the amount and no question of retrospective operation of the rule of provision arose in these circumstances. The grievance of the petitioners before the High Court was that the supervision charges have actually been recovered much in excess of the actual salary of the staff employed in the licensed premises and that because there was revisions in salary of Government servants and some audit objection were raised, the respondents started taking action of recovery of supervision charges with retrospective effect from 5.5.1970 on the strength of the circular dated 7.4.1981. The Bombay High Court held that neither of these provisions clothe the State Government or the Commissioner with the authority to charge the supervision charges with retrospective effect. Obviously, when Section 58A of the Prohibition Act uses the words "the cost of such shall be paid to the State Government" that would have reference to the cost of the staff as obtaining for the period during which the goods are stored in the bonded warehouse and not the incidence which the State would have to bear by reason of such a remote circumstance as the upward revision of the pay scales of its own employees at a later date. The Bombay High Court held that even apart from the absence of the provisions allowing retrospective recovery, the State would be estopped from asking for the difference on the basis of unanticipated escalation in the costs of supervision at a later point of time and, therefore, the Court held that no claim for the difference in the cost of supervision could be made by issuing the circular dated 7.4.1981. In the result, the High Court quashed the circular and restrained the State from claiming any levy, charge or excise duty on the debonded goods on the basis of those circulars and communications. The High Court in coming to the conclusion, relied upon the judgment in the case of *M/s. Mc Dowell & Co. Ltd. v. Commercial Tax Officer reported in AIR 1977 SC 1459*

17. The judgment in Gustad Mayur Irani's case (supra) [W.P. No. 940/1982 delivered on 12.9. 1990] was rendered by the Division Bench of the High Court of Bombay. The writ petition, in the said case, carries on business and deals in trade and import of foreign liquor including Indian made foreign liquors and also holder of licence issued under the provisions of the Prohibition Act and the Rules made under Rules of 1963 and 1964. The writ petitioner contended before the High Court that Section 58A of the Prohibition Act does not empower the respondents to impose the fees with retrospective effect and that the demand made in the year 1982 for the period commencing from 1974 onwards is unreasonable and, therefore, the demand notice should be struck down on the ground of unreasonableness. The judgment in the case of M/s Anabeshahl Wine and Distilleries Pvt. Ltd. (supra) was cited before the Division Bench. The judgment rendered by he learned single Judge in W.P. No. 631/1982 (*Maneckjee Majshedjee v. The State of Maharashtra & Ors.*) raising an identical contention was also cited. Pendse J., by his judgment, turned down the contention and held that what is required by the State Government under Section 58A of the Prohibition Act is the fees for the service rendered and not the tax and that he said section enables he State Government to appoint staff under whose supervision the importation or storage of liquor will be carried out and the cost of such staff can be recovered from the importer. The learned single Judge also held that the mere fact that the charges are recovered after passage of time would not make recovery defective or without authority. The contention that the recovery was made with retrospective effect was turned down by holding that the liability to pay charges was undertaken and what is being recovered is only the difference in rates of charges and the liability and the quantum are two different concepts and the liability is not imposed with retrospective effect but merely rates are revised with retrospective effect. The learned Judges of the Division Bench affirmed the view taken by the learned single Judge as correct and upheld the same. On the fact and circumstance of the case, the Bench was not inclined to hold that the demand suffers from unreasonable delay and, therefore,

must be struck down and the demand does not suffer from any infirmity.

18. In case of Mohan Meakin (supra) which was decided on 8.9.1992, the State of Maharashtra was seeking to recover supervision charges under Section 58A of the Prohibition Act with retrospective effect. It was contended that the demand for supervision charges was bad in law. Before the Full Bench, the judgment of the learned single Judge (Pendse, J.) of the Bombay High Court who negatived the contention of the petitioner by his judgment dated 19.6.1986 and the judgment of the Division Bench of the Bombay High Court in J.E. Bilimoria's case (supra) was also cited. The Division Bench which decided Bilimoria's case (supra) did not agree with the decision of Pendse, J. which was brought to its notice and decided the issue in favour of the respondent-Distillery before it. The issue relating to "retrospective" supervision charges again came up for consideration before the Division Bench of the Bombay High Court consisting of Pendse and Da Silva, JJ. in the case of Gustad Maur Irani (supra).

19. It seems that the judgment of the Division Bench of the High Court of Bombay, Nagpur Bench was not brought to the notice of the Division Bench of the Bombay High Court. The Division Bench of Bombay High Court followed the judgment of Pendse, J., referred to earlier, and decided the issue of supervision charges against the petitioner by its judgment dated 12.2.1990. There are, thus, two conflicting judgements of the two Division Benches of the High Court of Bombay on the question of supervision charges. When the matter came up for hearing before another Division Bench, the Division Bench referred the matter to the Full Bench as there was a conflict of decisions of two Division Benches of the said Court.

20. In the instant case, we are concerned with regard to Section 58A of the Prohibition Act. Before the Full Bench, the Distillery-Mohan Meakin contended that there is no provision under the Prohibition Act or under any of the Rules for recovery of supervision charges retrospectively and that under Condition No. 3, they are required to pay the cost of the staff appointed at the licensed premises in advance at the beginning of each quarter, which they have done, and, therefore, they cannot now be asked to pay increased charges with retrospective effect from 5.5.1970. The petitioners, in respect of their contentions, relied on a decision of this Court in the case of Income-tax Officer v. M.C. Ponnose reported in AIR 1970 SC 385 wherein this Court has observed that while it is open to a sovereign Legislature to enact laws which have retrospective operation, the Courts will not ascribe retrospectively to new laws unless by express words or necessary implication, it appears that such was the intention of the Legislature. Speaking for the Bench, Mrs. Sujata Manohar, J., as she then was has observed that the ratio of the said judgment has no application to the fact of the case before them and that Condition No. 3 of the licence requires the petitioners to pay such amount of costs as determined by the respondents in advance before the beginning of every quarter and that this condition is merely for administrative convenience. It does not prevent the State Government from recovering the cost of such staff subsequently, especially when both Section 58A of the Prohibition Act as well as Rule 7 do not prescribe any time limit within which such cost has to be recovered. The Full Bench further held that the demand for additional charges has been made by the State Government from the petitioners when the charges increased and hence the increased charges which have been demanded from the petitioners are from 5.5.1970 and that under Section 58A of the Prohibition Act and the relevant Rules, there is a clear existing statutory liability on the licensees to pay the cost of the supervisory staff and there is no change in the statutory liability. The Full Bench also held that the Division Bench at Nagpur in the case of J.E. Bilimoria (supra) is not right when it says that the cost of the staff which is required to be paid under Section 58A of the Prohibition Act has a reference only to the cost of the staff as obtaining for the period during which the goods are stored in the bonded warehouse.

Adding further, the Full Bench has observed that the cost is undoubtedly of the staff who is deployed at the bonded warehouse. But Section 58A of the Prohibition Act does not prescribe any date or period during which such cost should have accrued. If such costs arise at a later date by reason of retrospective revision in the pay scales of the staff so deployed, the petitioners are bound to pay such revised cost in view of the clear provisions of Section 58A of the Prohibition Act. The claim, therefore, of the petitioners that they are not liable to pay the additional charges sought to be collected from them under the circular of 9.2.1979 must be rejected.

21. The Full Bench of the Bombay High Court over-ruled the judgment in J.E. Bilimoria's case (supra) and approved the judgment in Gustad Mayur Inrani's case (supra) by Pendse and Da Silva, JJ.

22. We may now refer to the judgment dated 24.2.1994 of the learned single Judge of the Bombay High Court, Nagpur Bench in W.P. (C) No. 2718/1991 etc. filed by M/s Vidarbha Wine Traders & Ors. The common question involved in these writ petitions is regarding the powers of the State Government to recover the supervision charges with retrospective effect. Before the learned single Judge, the decisions in Mohan Meakin's case were cited. The learned single Judge held that the Full Bench has now answered the issue and held that J.E. Bilimoria's case (supra) was not correctly decided, the State Government is entitled to recover the supervision charges retrospectively. In that view of the matter, the learned single Judge dismissed the writ petitions. Against the said decision, S.L.P.(C) No..../1994 (CC 26531) was filed in this Court. This Court, upon hearing the counsel appearing on either side, condoned the delay and dismissed the special leave petition on 5.9.1994. The very same question was raised before this Court in the above special leave petition as to whether the State Government is empowered to collect differential supervision charges with retrospective effect under Section 58A of the Prohibition Act. Before this Court, the judgments in J.E. Bilimoria (supra), Mc Dowell and I.T.O. vs I.C.M. Poonnoose were cited. It was submitted before this Court, by the appellant-Company, that the impugned judgment of the Division Bench runs counter to an earlier judgment of the Division Bench of the same High Court on the same point and that another Division Bench in J.E. Bilimoria's case (supra) has quashed the similar demand of differential supervision charges retrospectively and, therefore, the judgment under appeal ignoring the earlier judgment of the Division Bench on the same point cannot be sustained. This Court has also noticed the judgment in Bilimoria's case (supra) was not challenged by the Revenue as per the information passed on by the learned counsel appearing for the respondents. We have already noticed that this judgment was rendered by this Court in Polychem's case (supra) on 4.8.1998. Unfortunately, the judgment rendered in Gustad Mayur Irani's case (supra), Mohan Meakin's case (supra) and the order passed by this Court in S.L.P.(C)...../94 (CC 26531) file by Vidarbha Wine Traders dismissing the special leave petition were not cited. This Court observed as follows :

"As observed in (I.T.O. v. I.M.C. Poonnoose), it is open to a sovereign legislature to enact laws which have retrospective operation. Even when Parliament enacts retrospective laws, such laws are no doubt prime facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. The Courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication, it appears that such was the intention of the legislature. Here, it does not appear to us that Section 58A of the Bombay Prohibition Act permitted the Government retrospectively to raise the quantum of costs, nor is there any warrant to infer that there was delegation to the rule making authority to charge the amount of costs on the basis of the events which not have been anticipated at the time the costs were assessed.

*This Court further, in paragraph 8, held as follows :*

"On a scrutiny of these two Division Bench judgements, the view taken in J.E. Billimona case commends to us and we are of the view that the reasoning given therein are well founded. We are, therefore, of the view that the impugned demand of differential supervision charges retrospectively cannot be sustained and accordingly the judgment under appeal is set aside and Writ Petition No. 1672 of 1983 filed by the Company stands allowed. The question posed at the beginning is answered in the negative."

23. We may also be benefited by the decision rendered by a Bench of three Judges of this Court in ***State Bank of Haryana & Ors. v. Jagae Ram & Ors.*** reported in (1980) 3 SCC 599. In this cases, the Excise and Taxation Commissioner, Haryana announced, by publication of a notice, the excise auctions for the financial year 1967-69 will be held on 27.3.1967 and that the terms and conditions in regard to the auction of retail vends of country spirits were set out in a pamphlet issued alongwith the notice and in the auction held for the retail vend, the respondents offered the highest bid for a quota of 62, 100 proof liters for which they became liable, under Condition 14(iii) of the auction, to pay an amount calculated at the rate of Rs. 17.60 per liter. On the bid being knocked in their favour, the respondents deposited 1/24th of the total amount payable by them, by way of security of the due performance of the terms of the auction, as required by condition 15(i) of the auction and Rule 36(22-A) of the Punjab Liquor Licence Rules, 1956 as amended. In this case, after accepting the terms and conditions in regard to the auction of retail vends of country spirit, the licensee failed to comply with the conditions of the contract. The said Rules required the licensee to pay an amount by way of charge divided in equal installments in a year and on default in payment of any installment, the State was justified in re-auctioning and recovering the resulting loss, if any, from the defaulter. This was the question in the appeal. This Court held as follow:

"Those who offer bids voluntarily in auctions do so with a full knowledge of the terms and conditions attaching to the auctions and they cannot be permitted to wriggle out of the contractual obligations arising out of the acceptance of their bids. The occurrence of a commercial difficulty, inconvenience or hardship in the performance of those conditions, like the sale of liquor being less in summer than in winter can provide no justification for not complying with the terms of the contract which they had accepted with open eyes. Such vendees, therefore, cannot invoke the writ jurisdiction of the High Court to avoid the contractual obligations incurred by them voluntarily.

The amounts, which are charged to the licensees who offer their bids in auction sales of vends are nether tax nor fee properly so called which would require the existence of a *quid pro quo*, nor in the nature of excise duty, which by reason of the constitutional constraints as to be primarily a duty on the production or manufacture of goods produced or manufactured within the country. The true nature of the charge which the Government levies in such cases is that it is a price which the State charges as a consideration for parting with its privileges in favour of the licensee. Such a charge is normal incident of a trading or business transaction . Since rights in regard to the manufacture and sale of intoxicants are vested in the State, it is open to it to part with those rights for consideration."

24. In the background of above decided cases, we shall now consider the case on hand. We have already extracted the relevant provisions, the Rules, the Regulations and the circular letters issued by the State Government. As per the well-settled rule of interpretation that the words in a provision are to be given their normal meaning as understood by the common man or by the trade as well as the widest meaning unless there is any limitation in that provision itself. The words "the cost of such staff shall be paid to the State Government" used in Section 58A of the Prohibition Act, in our view,

would include in their meaning all the costs incurred by the State Government for the purpose of disbursing pay and other allowances to the Government employees posted for supervision, whether recovered in advance or in due course the additional amounts which become recoverable on account of upward revision of pay scales with retrospective effect, because there is no limitation of any kind in Section 58A of the Prohibition Act to the effect that the costs are to be recovered only in advance, and that too only such costs as could be worked out on the date of demand or to the effect that the burden of additional amounts on account of revision of pay scales with retrospective effect should not be recovered from the liquor licensee. In our view, there exists full power under Section 58A of the Prohibition Act itself to levy and recover all costs of supervision and, therefore, no limitation can be read into the power to recover all costs present, future and past which are/or were actually incurred by the State Government in view of payments made/to be made to its employees posted for excise supervision, in spite of provisions of sub-rule 12 of Rule 17 of the Rules of 1966 and sub-rule of 12 Rule 6 of the Rules of 1973.

25. It was submitted on behalf of the appellants that for administrative convenience only the costs are calculated and recovered in advance from the licensee and, therefore, sub-rule 12 of Rule 17 of the Rule 1966 or under sub-rule 12 of Rule 6 of the Rule of 1973 could not be construed as an effective representation that no further cost would be recovered when provision under Section 58A of the Prohibition Act is clearly to the effect that the licensee has to bear the entire cost of the supervisory staff, and therefore, the question of application of principle of promissory estopped, as argued by the learned counsel for the respondents, would not arise. The Full Bench of the Bombay High court also ruled accordingly. Further Rule 17(12) of the Rules of 1966 and Rule 6(12) of the Rules 1973 providing for recovery of supervision charges in advance, do not direct that differential amounts are not to be recovered, if pay scales are revised. On the hand, the aforesaid Rules are to be read with other provision giving residuary powers in both the sets of Rules viz. Rule 17(43) of the Rules of 1966 and Rule 6(36) of the Rules of 1973, which direct that the licensee shall comply with all orders issued under the Prohibition Act and Section 11 of the Prohibition Act clearly provides that the State Government may permit business in liquor subject to the manner and to the extent provided by the provisions of this Act or any Rules, Regulations or orders made or in accordance with the terms and conditions of the licence, permit, pass or authorization granted thereunder.

26. This Court *Assistant Collector Central Excise v. National Tobacco Co.* reported in AIR 1972 SC 2563 observed that it is a well established rule of construction that a power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied and as there was no express prohibition in the Central Excises and Salt Act, 1944 and the Rules thereunder against making an assessment by the authorities at any other time, from provisions of Section 4 of the 1944 Act and Rule 10A of the Central Excise Rules an implied power to carry out assessment not specifically provided for could be inferred. It was observed in paragraph 31 of the aforesaid judgment, *inter alia*, that "There is no express prohibition anywhere against an assessment at any other time in the circumstances of a case like the one before us where no "assessment", as it is understood in law, took place at all. On the other hand, Rule 10A indicates that there are residuary powers of making a demand in special circumstances not foreseen by the framers of the Act and the rules."

27. In the case on hand, the licensees gave an undertaking at the time of obtaining grant or renewal of the license in the application form itself, both under the Rules of 1966 and the Rules of 1973, that they would abide by all orders made under the Prohibition Act and the Rules. Under Rule 17(43) of the Rules of 1966 and under Rule 6(36) of the Rules of 1973, there are residuary powers of making a demand in special circumstances not foreseen in Rule 17(12) of the Rules of 1966 or Rule 6(12) of

the Rules of 1973. It is seen from Rule 17(43) of the Rules of 1966 that the licensee shall abide by all the Rules, Regulations and orders made from time to time under the Act. A similar provision also exists under Rule 6(36) of the Rules of 1973. The object of Section 58A of the Prohibition Act and the intention of the Legislature, in our opinion, could not be anything other than that the entire cost incurred by the Government on account of pay-scales paid to the Government employees posted for supervision should be paid by the licensee and that this cost should not be met from the Government exchequer.

28. We have already extracted the relevant undertaking that the respondents had given in the application in Form P.L.A. prescribed under the Rules of 1966 and application in Form C.L.A. prescribed under Rules of 1973. Apart from the undertaking under Condition No. 17 of the licence in Form C.L.A. for grant or renewal of licence that the orders made from time to time under the Act shall be complied with. Sub-rule 43 of Rule 17 of the Rules of 1966 and sub-rule 36 of Rule 6 of the Rules of 1973 also prescribed that the licensee shall abide by the orders made from time to time under the Prohibition Act and these are the provisions which give residuary powers to the petitions, *inter alia*, to direct to pay the supervision charges.

29. The legal licensee does not have a fundamental right to deal in liquor under Entry 8, List II in the Seventh Schedule to the Constitution of India and thereby under Section 49 and 143(2)(u) of the Prohibition Act, the State has the exclusive right/privilege in respect of potable liquor and the State, in our opinion, can charge any reasonable expenses or even consideration for permitting such activity by grant of licence and that respondents ought to comply with all reasonable orders, as undertaken by them while obtaining the licence. This factor, the High Court, has not appreciated. Once the liquor licensee has undertaken to abide by all reasonable orders under the Prohibition Act while obtaining the licence, they cannot wriggle out of the contractual liability voluntarily incurred by them.

30. The order of the High Court is bad in law. The High Court, in our view, has erred in not appreciating the impugned demand notice was also in the nature of demanding balance of the price of the exclusive privilege which would become final only on issue of the Notification, order under article 309, the bulk of which have already been recovered in advance, which privilege exclusively vests with the Government considering effect of provisions especially Section 49 and Section 143(2)(u) of the Prohibition Act. In our opinion, the establishment charges demanded are in the nature of price for parting with the privilege to permit manufacture and sale of liquor, and the privilege exclusively vests with the Government.

31. We have already noticed the observations made by this Court in the case of M/s Anabeshahi Wine and Distilleries Pvt. Ltd. (*supra*). In this context, it is well-settled by catena of decision of this Court that there is no fundamental right to trade in liquor and State can charge consideration for granting the privilege in respect of potable liquors for raising revenue as ruled in M/s Anabeshahi Wine's judgment (*supra*).

32. As already noticed, the High Court has failed to appreciate that the judgment of this Court in Polychem's case (*supra*) was required to be read with the decision of the Full Bench of the said Court in Mohan Meakin's case (*supra*) in which the earlier decision in J.E. Bilimoria's case (*supra*) was overruled on entirely different reasons than those given in the judgment of the High Court in Gustad Mayur Irani's case (*supra*), the judgment dated 24.2.1994 in W.P.No. 2718/1991 and M/s. Vidarbha Wine Traders v. State of Maharashtra and order dated 5.9.1994 of this Court rejecting S.L.P.(C)No...../1994(CC 26531) filed by Vidarbha Wine Traders & fifteen other licensees.

33. In spite of the above position including different reasons given in the Full Bench judgment than those in Gustad Mayur Irani's case (supra) and in the rejection of the special leave petition filed by Vidarbha Wine Traders, learned counsel for the respondents is unable to give any reasons for establishing that the Full Bench decision in the Mohan Meakin's case (supra) was not correct and the High Court has also not given any reasons in the impugned judgment for disagreeing with the reasons given in the Full Bench judgment in the Mohan Meakin's case (supra).

34. We have perused the judgment in Polychem's case (supra) which was delivered on the basis of concession and incorrect information submitted by the learned advocate appearing for the State of Maharashtra. The above facts and the legal portion that the J.E. Bilimoria decision was overruled long back in the Full Bench judgment in the case of Mohan Meakin (supra) and which Full Bench judgment was already confirmed by this Court by order dated 8.9.1994 rejecting the Special Leave Petition No...../1994(CC 26531) filed by Vidarbha Wine Traders and 15 other licensees were not placed for consideration of this Court in the Polychem's case by the state of Maharashtra as would be seen from the following observation in Polychem's case, *inter alia*, that "It is common ground that these supervision charges are collected in advance at the beginning of each quarter..... We presume that his Division Bench judgement was not brought to the notice of the latter Division Bench, otherwise they would not have taken diametrically opposite view without referring the issue to a larger Bench. We further notice that the judgment in J.E. Bilimoria's case was not challenged by the Revenue as per the information passed on by Mr. Nargolkar, learned counsel for the respondents."

35. It appears that the learned counsel appearing for the State of Maharashtra had not sought any instruction in the Polychem' case (supra) before making any statement in respect of J.E. Bilimoria judgment (supra), when it was already overruled long back in the judgment of the Mohan Meakin's case (supra). Therefore, the correct facts and the legal position, as submitted above, could not be placed for consideration of this Court in the polychem matter. We are, therefore, of the opinion that the judgment of this Court in Polychem's case was delivered on the basis of a concession by the learned Government advocate when he conceded that supervision charges are collected only in advance, when under the residuary powers under Rule 17(43) of the Rules of 1966 and Rule 6(36) of the Rules of 1973, additional amounts were or could be demanded, as also directly under Section 58A and Section 114 of the Prohibition Act. In our opinion, the High Court has erred in not appreciating the submissions of the appellants that the judgment in the case of Polychem appears to have been delivered on the basis of a concession/incorrect information and its ratio ought to be applied to the facts placed for consideration and the issues considered and decided.

36. This apart, the High Court was also not right in rejecting the writ petition of the respondent at the threshold. The High Court has failed to notice another important factor that the statutory provision under Article 309, namely, the Notification dated 10.12.1998 and the consequential administrative instructions/Orders issued for carrying out the executive function under Section 58A of the Prohibition Act and Article 162 namely, the circular letter dated 30.7.1999 had not been challenged by the respondents herein and, therefore, they were not entitled to challenge the demand notice which was merely a consequential communication. The High Court, therefore, is not right in quashing the demand notice issued by appellant No. 4, namely, the Sub-Inspector of State Excise, in charge of the manufactory of the respondent, without examining the validity of or quashing the Rule of 1988 and the consequential circular letter dated 30.7.1999 issue by appellant No. 2 namely, the Commissioner, since the demand notice was merely a consequential communication issued in furtherance of the Rules of 1998 and the circular letter dated 30.7.1999.

37. For the aforesaid reasons, we are of the opinion that the impugned demand notice was nothing but final settlement of accounts communicated by appellant No. 4, one contracting party to the other contracting party, the respondents, in terms of the contract executed between them, which is executed at the time of grant/renewal of the licence. The contract is executed after the licensee gives the undertaking in the application in Form P.L.A. prescribed under the Rules of 1966 or the licence in Form C.L.A. prescribed under the Rules of 1973, to abide by directions/orders and complies all other requirements and when the application is accepted by the appellants by grant/renewal of the licence. The respondents/licensees, therefore, cannot wriggle out of the contractual obligation of payment of the entire cost of supervision regarding which they receive a final account or bill through the impugned demand notice and, therefore, the respondent ought to pay the amount demanded.

38. As pointed out by Y.V. Chandrachud, C.J. as he then was what the respondents agreed to pay was the price of an exclusive privilege which the State parted with in their favour. They cannot, therefore, avoid their liability by contending that the payment which they were called upon to make is truly in the nature of excise duty and that no such duty can be imposed on liquor not lifted or purchased by them. The respondents, in our view, must fail in their contention both on account of the objection to the maintainability of the appeals and on merits concerning the nature of the payment which they are liable to make.

39. For the foregoing reasons, we allow all the appeals and set aside the impugned judgments. However, there shall be no order as to costs.

**S.B. Sinha. J.**

40. I regret to be unable to persuade myself to concur with the opinion of my learned Brother Hon'ble Dr. Justice A.R. Lakshmana for whom I have the highest respect.

41. Concededly a citizen of India in view of a catena of decision of this Court has no fundamental right to carry on trade or business in potable liquor. The State indisputably has a right to regulate or prohibit business in portable liquor as a beverage or otherwise keeping in view the fact that the same is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* begin inherently harmful. The State is, therefore, entitled to completely prohibit a trade or business in liquor and create monopoly either in itself or in an agency created by it or take over such activities itself. For the purpose of selling the licence it can adopt any mode with a view to maximise its revenue so long as the method adopted is not discriminatory.

42. However, when the State permits trade or business in potable liquor, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business. [*See Khoday Distilleries Ltd. v. State of Karnataka (1995) 1 SCC 574*].

43. Although a citizen has no fundamental right to carry on trade or business in potable liquor, but when he is permitted to carry on such business, he would be entitled to claim equal right as against other citizen. In absence of the State imposing any prohibition or monopolizing the business, the same may be carried on by the licensee without being subjected to any discrimination. Such a right although may not be elevated to the status of a fundamental right but all the same it is a right.

44. The Bombay Prohibition Act, 1949, regulates the rights of the distillers in carrying on business.

It is beyond any cavil that a right to carry on business in liquor being not absolute, the same would be subject to such restrictions and limitations as may be imposed by law.

45. Section 58A of the Act mandates that the cost of the excise supervision would be borne by the licensees.

46. The mode and manner of realisation of such costs, however, has been laid down only in the rules and/or the conditions of the licence. Such cost of excise supervision does not constitute 'tax' or 'fee' but is a part of the price for grant of exclusive privilege to the licensee for carrying on his business. The price required to be paid is, thus, a contractual one. The charges, thus, can be levied either to entering into contract or during the currency thereof.

47. But can it be said that by reason thereof, the State is entitled to recover the difference in the salaries of the employees after the currency of the licence is over is the primal question involved in this appeal ?

48. By reason of the Maharashtra Civil Service (Revised Pay) Rules, 1998, a retrospective effect and retrospective operation was given to the recommendations of the Fifth Pay Revision Commission with effect from 1.1.1996. A purported circular enabling the State to recover the difference in wages was issued in December 1999 and the impugned demand notices were issued in 2000. The rules, the circulars as also the demands were indisputably made/issued after the licensing period was over.

49. Rule 17 of Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966 *inter alia* that the licensee is to pay the amount as and when a demand therefor is made. Clause (12) of Rule 17 of the rules was amended on 15.8.1974 providing that the cost of excise supervision should be paid to the State Government by the licensee annually in advance. Furthermore, condition No. 2 of the licence is in the following terms :

"(2) In addition to the fee mentioned above, the license shall pay *quarterly in advance* such charges as the Government of Maharashtra (hereinafter referred to as "Government") may, from time to time, *fix in the behalf towards* the costs on account of salary, dearness allowance, compensatory allowance and other charges, namely, contingent expenditure, if any, and the leave and pension charges of such Prohibition and Excise staff as the Commissioner of Prohibition and Excise (hereinafter referred to as "Commissioner") may think it necessary to employ for the purpose of supervising the operation of manufacture, storage and supervising the operations of manufacture, storage and issues of spirit by the licensee."

(Emphasis supplied)

50. It is, therefore, clear that by reason of the provisions of the Rules or terms of conditions of licence, the demand on account of excise supervision charged was to be made in advance.

51. Such charges are required to be paid by the licensee quarterly in advance. The State is entitled to fix the cost of supervision charge from time to time but the same has to be done during the currency of contract and not thereafter as there does not exist any contract to the contrary.

52. Interpretation of a statute, it is trite, must be made on a conjoint reading of the Act, rules made thereunder as also the terms and conditions of the licence. Section 58A of the Act does to provide

for the mode and manner for recovery of the cost of excise supervision. It has been provided for in the rules as also the conditions of licence. The rule when validly made forms part of a statute. Can it be said that a statutory rule can be ignored on the ground that the same was made only for administrative purposes? Can it further be said that the conditions of the licence can be interpreted in such a manner so as to impose upon the licensee a burden which was not contemplated at the time when licence had been granted and/or during the currency thereof? Answer to both the question, in my opinion, should be rendered in the negative.

53. This Court in ***Government of Andhra Pradesh v. M/s Anabeshahi Wine Distilleries Pvt. Ltd. [(1988) 2 SCC 25]*** while considering the validity of Section 28(2) of the A.P. Excise Act, 1968 which is in *pari materia* with Section 58 of the Bombay Prohibition Act, observed :

"....A predetermined amount equivalent to or even higher than the amount which is sought to be recovered by the appellant from the respondent calculated for the entire period of the licence could have been demanded in a lump sum as price for parting with the privilege and it could not have been challenged by the respondent in view of the principle enunciated by this Court in the aforesaid cases. Simply because the demand was spread over with a view to making it just and reasonable so as to represent the actual expenditure incurred by the government to maintain the requisite excise staff at the factory premises of the respondent as contemplated by the relevant provisions of the Act and the Rules, it would not become illegal and vulnerable."

(Emphasis Supplied)

54. This Court, therefore, held that the amount should be predetermined at the time of entering into contract. Such an amount, however, may be spread over with a view to making it just and reasonable. This Court further observed.

55. The option of the licensee to take or not to take a licence, would, thus depend upon the price which was to be fixed. The risk involved in the matter may be reasonably certain. A licensee before entering into a contract is entitled to know what price he has to pay for the grant of exclusive privilege or what are the risks involved in it. A price, thus, must be predetermined and cannot be redetermined and/or demanded after a period of four years of the expiry of the licence.

56. The rights and obligations of the parties to a contract are mutual. Both the State and the Licensee are bound by it. When a contract is a statutory one, the terms and conditions of a statute, the statutory rules would govern the contract. (See ***Assistant Excise Commissioner and Other v. Issac Peter and Other reported in (1994) 4 SCC 104***) A court of law shall not for the purpose of interpretation of the terms of the contract read the provisions of status in such a way as a result whereof additional liability may be imposed on a party to the contract.

57. The reason why a manufacturer must have a fair knowledge about his liability for obtaining a licence would be that he may during the currency of the licence fix the price of liquor in such a manner so that all charges are payable by him may be passed onto the consumers. It would not be correct to contend that such costs can be recovered after the demands are made long after the contract as been worked out. It will be preposterous to suggest that the liability in respect of the increased costs of excise supervisions for one licensing year can be passed on to his consumers after four years or more.

58. It is trite that the rights and obligations of the parties will come to an end with the cessation of

the contract unless there exists a contract contrary thereto. In other words, in a cause where the liability of a contracting party would extend beyond the contract period, an express stipulation in that behalf must be made in the contract itself.

59. A party to a statutory contract is bound to discharge his obligations in terms of the provisions of the Act, Rule or conditions of licence as they stood. He is also entitled to enforce his rights. No executive order, in my opinion, can be issued after a long time to fasten a new liability upon the licensee particularly when grant of licence for each year would result in a separate contract which may not only provide for a different price but also different terms and conditions as well as the mode and manner in which the rights of the parties thereto are required to be exercised and/or the obligations are to be discharged; more so when one contracting party has no say therein. It is well-settled that by reason of an executive act a liability cannot be created with retrospective effect. The said rule shall squarely apply also in relation to a statutory contract. Furthermore, the statutory authority has been enjoined with a duty to follow the mode as regards recovery of the costs of excise supervision. The mode and manner thereof have been fixed, the statutory authorities ordinarily must follow the procedure laid down therefor.

60. State in pursuance of its welfare activities may increase the pay of its employees with retrospective effect but such burden cannot be passed on to a licensee by an unilateral act on its part. For enforcing the same, there must be a contract to the contrary.

61. It is one thing to say that a little deviation in the procedure may not prejudice a party to the contract but it is another thing to say that a fresh/new liability is created by an executive act by giving a complete go-by to the contractual terms.

62. The period of licence determines the period of contract and, thus, no recovery of any demand made in respect thereof is permissible in law.

63. The matter may be considered from another angle. The licence of the licensee after 1996 might not have been renewed. Licence for each year is a fresh grant and, thus, the liability of a licensee in relation to the licensing year so far as the price for grant of exclusive privilege is concerned must be held to be payable only within the year during which the contract remains in force. For the purpose of entering into a contract with the State, the licensee has to pay different price for each contract. The said Act, the rules made thereunder or the conditions of licence do not postulate that a part of the price can be demanded even after the contract comes to an end.

64. It may be one thing to say that the liability of the licensee had been determined pursuant to or in furtherance of a decision taken by the State in terms of the provisions of a statute or otherwise within the period during which the licence was in force but it is another thing to say that the decision had been taken after expiry of the licence as a result whereof the liability of the licensee is determined after the period of contract is over. It may be true that under the rules or conditions of licence, the licensee is bound to comply with the provisions of the Act, rules and regulations and conditions of the licence but such undertaking and/or liability comes to an end with the cessation of contract.

65. In Halsbury's Laws of England, 4th Edition, Volume 41, the law is stated thus :

"677. Effect of revenue duties on price. Whoever may be liable and on whatever event for the payment of customs or excise duty or value added tax, the amount of the duty is usually passed on

the buyer as part of the price. It is the responsibility of the seller to quote an inclusive price if he wishes, and if he fails to do so he cannot later remove the duty payable as an addition to the contract price. However, where a new or increased customs or excise duty or value added tax is imposed after the making of the contract, but before delivery of the goods in the case of customs or excise duty, or supply of the goods in the case of value added tax, the duty or increase of duty, if paid by the seller, may unless otherwise agreed, be added to the price ; and conversely where a duty is repealed or reduced, if the seller has had the benefit to the alteration, the duty or reduction may be deducted from the price. As regards customs or excise duty, but not value added tax, in addition to the actual amount of the duty to be added or deducted there may also be added or deducted a sum representing the expenses incurred or saved, as the case may be, as a result of the additional or repealed duty. The amount of such expenses, if not agreed upon by the parties, is settled in default of agreement by the revenue authorities."

Section 62 of the Sale of Goods Act, 1930 reads thus :

"Exclusion of implied terms and conditions : -

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract."

66. A change in the amount of consideration not only must be specifically provided in the contract but the same must also undergo a strict test.

67. In *Conway Brothers and Savage v. Mullhern and Co. (Limited)* [VOL.XVII(1900-1901) The Times Law Reports 730], sub-section (1) of Section 10 the Finance Act, 1901 interpretation whereof fell for consideration was in the following terms :

"Where any new Customs import duty or Excise duty is imposed, or where any Customs import duty or Excise duty is increased, and any goods in respect of which the duty is payable are delivered after the day on which the new or increased duty takes effect in respect of contract made before that day, the seller of the goods may, in the absence of agreement to the contrary, recover as an addition to the contract price a sum equal to any amount paid by him in respect of goods on account of the new duty or the increase of duty, as the case may be."

68. Interpreting the said provision, as regard the defendant's plea of realisation of additional tax in future deliveries, it was held that the said Act cannot be applied retrospectively so as to impose an additional liability upon the buyer, save and except when a contrary intention is clearly manifested.

69. In *American Commerce Company (Limited) v. Frederick Boehm (Limited)* [Vol. XXXV 1918019 The Times Reports 224] interpreting the said provision, it was observed :

"His Lordship read the section and said that as it was a c.i.f. contract there would have been no obligation on the vendors to pay any duty at all in the absence of special provision that the sale was to be duty paid. Mr. Neilson had contended that those words meant that both the old duty and the new duty would be borne by the sellers, but he could not accept that contention. The case was one, in his opinion, to which the section directly applied, and the words "duty paid" did not constitute an agreement to the contrary within the meaning of the section.

As to the further point that the time for performance was extended by agreement, there was in law

a new agreement. That was made on April 2, and the date for fixing the amount of duty payable would therefore be that day. But the increased duty did not come into force until April 23, so the fact that the time had been extended would not hold the defendants. The defendants should have protected themselves by expressly providing that the sellers must pay any increased duty which might be imposed, and as they had not done so the plaintiffs must have the benefit of the statute and would have judgment, with costs."

70. In the instant case also the State of Maharashtra did not expressly protect themselves that the respondents must pay any amount by way of increase in wages pursuant to or in furtherance of the recommendations made by the Fifth Commission with retrospective effect. Having not done so, they are not entitled to claim the same from the licensees.

71. In *Occidental Crude Sales Inc. v. Latsis* [1976 Vol. 2 *Lloyd's LR* 412] despite provision in the contract that buyer has to bear all charges, fees, dues, and taxes which would not be deemed to be new charges, it was observed:

"The seller accordingly wishes to guard against a possible loss-making situation which could be extremely serious for him; That is the purpose of cl. 11.1. However, the buyer, in his turn, could not be expected to accept an open-ended commitment to bear any increase in cost which might be imposed upon the seller or the producer of the oil. He would wish to have the choice of accepting the increase and going on with the contract or of not accepting it and terminating the contract."

72. These decisions are pointers to the fact the even in relation to the increase in duty, the same, subject to an express contract, shall be operative only during the currency of the contract and not beyond the same.

73. In *Love v. Norman Wright (Builder), Limited* [Law Reports 1944 (1) *K.B.* 484], while answering a question as regarding levy of purchase tax under Section 27 of the Finance Act, 1940, it was observed :

"The matter really becomes, clear when s. 28 is considered. That section has the same object as s.10 of the Finance Act, 1901, which dealing with the imposition of new duties, whether of customs or excise, gives the seller of goods under a contract made before the new duties, whether of customs or excise, gives the seller of goods under a contract made before the new duties were imposed the right to add the amount to the contract price, or, if the duties are abolished or decreased, allows the buyer to reduce the price by the amount of the reduced duty. So, with regard to purchase tax. No doubt in the great majority of cases the seller would pass on the burden of the tax to the buyer. Consequently, this section provides, by sub-s. I, that he may do so in respect of a contract made before the tax was imposed but which would be subject to tax when the time for the performance arrived, and sub-s.2 gives a corresponding rights to the buyer to make a deduction if the tax is reduced after the contract is made. In either case the right is given only in the absence of agreement to the contrary, and in the case of a buyer only "if the seller has had... the benefit of the tax not becoming chargeable "or becoming chargeable at the reduced rate." Observe that sub-s. I allowed an addition to, and sub-s.2 a reduction from the consideration, that is, the price. Similarly, s.21, sub-s. I, which provides for the ascertainment of a wholesale value of goods in respect of which tax is chargeable, says that it is to be "the price which.... the goods would fetch....if "no tax were chargeable in respect of the sale." thus indicating an assumption that normally the tax will be added to the purchase price by the seller....."

It was further observed :

".....Where an article is taxed, whether by purchase tax, customs duty or excise duty, tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration, though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer. If the buyer agrees to the price it is not for him to consider how it is made up, or whether the seller has included tax or not."

74. The said decision has been followed by this Court in ***Black Diamond Beverages and Another v. Commercial Tax Officer, Central Section, Assessment Wing, Calcutta and Others [(1998) 1 SCC 458]***.

75. It is well-settled that a definite price is an essential element of a binding agreement and although a definite price need not be stated but assertion thereof either by reason of express reason or implied reason is imperative.

76. In para 59 Halsbury's Laws of England, Fourth Edition, Reissue, the law is stated thus :

"59. Adjustment of contracts on changes in customs or excise duties or value added tax. Whoever may be liable and on whatever event for the payment of customs or excise duty or VAT, the amount of the duty is usually passed on the buyer as part of the price."

77. An act on the part of the State to increase wages of its employees is a welfare act. When such increase takes place with retrospective effect the validity thereof can be upheld only because it is for the benefit of the employees. Such a beneficial act on the part of the State, however, would not bind a third party. An increase in wages by the State with a retrospective effect was an unilateral act on the part of the State. If, it will bear repetition to state, it was intended to be passed on by the State to the respondent the same ought to have been the subject matter of a specific contract so as to avoid the uncertainty of the terms of contract as contemplated under Section 29 of the India Contract Act. The rule of construction of contract is that if the terms of the agreement are so vague and indefinite that it may not be ascertained with reasonable certainty as regard intention of the parties, the same would not be enforceable at law. Meaning of a contract must be clear on its face. In any event, in the instant case, the contract had been worked out. Once the contract had been worked out, a fresh liability cannot be thrust upon a contracting party.

78. It is now accepted that the decision of the Full Bench of the Bombay High Court in ***Mohan Mekin's case*** was not brought to the notice of the Bench deciding Polychem. The parties referred to two conflicting views of the High Court. This Court applied its mind and approved the judgment rendered by the Division Bench in Bilimoria's case. There is no rule of practice or precedent that where a Bench of the High Court is faced with two conflicting views; one rendered by this Court and another by a Full Bench of the same High Court, both have to be read together. In fact both can't be so read unless the decisions are such which can be explained and the ratio of one may be held to be not applicable in the fact of the matter. In the instant case, the views of the Full Bench and this Court are diametrically opposite and thus both the decision could not have been given effect to simultaneously by reading them together or otherwise.

79. For the aforementioned reasons, I am of the opinion that the impugned judgement cannot be faulted. This appeal is therefore, dismissed.