

petitioner. The respondents will be entitled to adjust a sum of Rs. 15,000 which has already been paid to the petitioner under para 7(b) (ii) of the Instructions dated March 11, 1986. We make no order as to costs.

J.S.T.

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

M/S VIJAY KUMAR AND COMPANY,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS.—Respondents.

C.W.P. No. 18432 of 1995.

29th February, 1996.

*Interest Act, 1978—Ss. 2, 3 & 4—Negotiable Instruments Act, 1881—Ss. 78 & 79—Code of Civil Procedure, 1908—S. 34—Punjab Excise Act, 1914—S. 34—Haryana Liquor Licence Rules, 1970—Rls. 35 and 36—Interest—Adjustment towards licence fee—Licencees required to deposit cash security for observance of terms of licence at the time of auction—Such cash security is in fact an advance licence fee and part of price for selling liquor—Claim for interest on security deposited and for adjustment against last instalment of licence fee is untenable—Licencees cannot claim interest under the Negotiable Instruments Act, Interest Act or on principles of equity—The Government's right to charge interest on default in payment of instalments cannot be read as imposition of a corresponding obligation on the Government to pay interest on the money deposited by the licencees—Government cannot be compelled to pay interest on its own money merely because it is described as security—Writ claiming interest on security is liable to be dismissed.*

*Held, that the petitioners volunteered to fulfil those conditions and thereafter the Governments granted licence to them. The petitioners cannot, therefore, challenge the terms and conditions incorporated in Annexure P-1 and the conditions of the licence by arguing that they are arbitrary or unreasonable.*

(Para 5)

*Further held, that the amount equivalent to 16-2/3 per cent of the annual licence fee though described as security in the Act as well as the Rules and Annexure P-1, in substance it is a price payable by the person who seeks licence to sell liquor—both country liquor and foreign liquor. The Government is possessed with the exclusive privilege to deal in the liquor and, therefore, the one, who wants to*

get a licence to sell liquor has to pay a price for purchase of the privilege and it is not open to such person to subsequently plead that the conditions of the contract are arbitrary or unreasonable.

(Para 6)

*Further held*, that the method of grant of licence by asking the highest bidder to deposit a part of the license fee in advance does not suffer from any inherent infirmity and after having entered into a contract, the petitioners cannot make a claim that the State has acted arbitrarily by demanding the cash security in the form of advance towards the license fee. We are also of the considered opinion that in such like contractual matters where the petitioners have purchased the right of the Government to trade in liquor, they are not entitled to complain of any arbitrariness by means of writ petition under Article 226 and there is no reason whatsoever for this Court to exercise its writ jurisdiction to relieve the petitioners from the burden of depositing a part of the price of liquor in advance.

(Para 11)

*Further held*, that in the absence of such stipulation the petitioners cannot contend that they are entitled to the amount of interest at the rate of 18 per cent per annum merely because the Government is entitled to charge interest at that rate as and when they commit default in payment of the instalments. In fact, incorporation of a provision requiring the petitioners to pay interest in case of default in the payment of the instalments and absence of such a provision for payment of interest to the petitioners show that the Government had made it clear to the petitioners, even before they gave their bids, that no interest would be payable to them on the amount of the advance license fee although they will be required to pay interest in case of failure to deposit the instalments.

(Para 12)

*Further held*, that what the petitioners want us to hold is that the amount deposited by them was a security for the performance of an obligation imposed by law or the contract. However, they have failed to show as to how the amount deposited by them could be treated as security for the performance of an obligation imposed by the law or contract. The amount, as already mentioned above, was simply a part of the price which the petitioners were required to pay for purchase of the right to sell liquor. It was an advance payment towards the license fee which is liable to be adjusted at the end of the year. Therefore, neither under Section 3 nor under Section 4 of the 1978 Act, the petitioners can claim interest from the Government.

(Para 17)

*Further held*, that the amount required to be deposited as advance money by the successful bidder for getting a licence is for the purpose of ensuring the timely payment of instalments of license

fee. By its experience, the Government has felt that the licensee commit breach of the condition of auction and licence and the public revenue adversely suffers. Therefore, in order to ensure regular payment of the instalments and at the same time to secure the public revenue the Government has made it obligatory for the successful bidder to deposit the advance money. The forfeiture clause contained in para 6 of Annexure P-1 is also necessary to protect the public revenue against unethical practices adopted by the licensees of not paying the instalments within the stipulated time. In such a case, the advance money deposited by the licensee can be utilized by the Government for compensating the loss to the public revenue. Precisely for this reason the licensee is required to make good the amount of cash security within seven days and failure of the licensee to do so may invite cancellation of the licence. It cannot, therefore, be said that the advance money is paid by the licensees for performance of any legal obligation or part of contract. Therefore, they cannot claim any interest. The right of the Government to charge interest from the licensees in case of default of payment of instalments cannot be read as imposition of a corresponding obligation on the Government to pay interest on the money deposited by the licensees.

(Para 19)

*Further held*, that the money which the licensee deposits with the Government in the form of cash security is in fact a part of the public revenue. It is a part of the price which a licensee pays to the Government for getting a licence. Therefore, it would be highly anomalous if the Government is required to pay interest on the amount which is a part of the price of the privilege to sell liquor vesting in the Government and which the licensee purchases from the Government. The Government, in our considered opinion, cannot be made to pay interest on its own money merely because it is described as security under the provisions of the Act and the Rules framed thereunder or the conditions of the auction.

(Para 20)

*Further held*, that :—

- (i) There is no legal or fundamental right vesting in the petitioners to carry on trade or business in liquor and the Government is possessed with the exclusive privilege to sell liquor itself or through licensee ;
- (ii) The petitioners, who have accepted the conditions of auction and who have deposited the amount in the form of cash security (advance money) fully knowing well the terms and Conditions of auction, have no *locus standi* to challenge those very conditions ;
- (iii) The amount required to be deposited in the form of security is in reality a part of the price which the petitioners are required to pay for purchasing right to sell liquor from the Government ; and

(iv) No interest is payable on the amount desposited by the petitioners either under the provisions of Negotiable Instruments Act, 1881, the Interest Act, 1978 or in common law or equity.

(Para 21)

Mohan Jain, Advocate, *for the Petitioner.*

H. L. Sibal, Advocate General, Haryana with Rajiv Raina, Deputy Advocate General Haryana, *for the Respondents.*

#### JUDGMENT

G. S. Singhvi, J.

(1) These petitions have been filed by the licensees of country liquor and Indian Made Foreign Liquor of the States of Punjab and Haryana and the Union Territory of Chandigarh with almost an identical prayer to direct the respondents to pay interest to them at the rate of 18 per cent on the security deposited by them and to adjust the amount of interest against the last instalment of licence fee payable by the petitioners. Keeping in view the fact that the main prayer made in all the petitions is identical, we are deciding them by a common order.

(2) In response to the announcement made by the Government of Punjab and Haryana and Union Territory of Chandigarh for auction of licences for retail vends of country liquor and the whole-sale as well as retail vends of foreign liquor for the year 1995-96, the petitioners gave their bids along with other competitors. Their bids were accepted by the the competent authorities. The petitioners deposited the requisite license fee and they were granted L-14A licence for country liquor vends and L-2 licence for foreign liquor. Petitioners in writ petitions other than Civil Writ Petition Nos. 150 of 1996 and 1849 of 1996 have been given these licences for various districts of Haryana. Petitioner M/s Sat Pal Surinder Singh and Company (C.W.P. No. 150 of 1996) has been granted licence by the Licensing Authority of Chandigarh. Petitioners M/s Surinder Kumar and Company and two others (C.W.P. No. 1849 of 1996) have been granted licences for the district of Patiala. Each of the petitioners deposited 16 $\frac{3}{4}$  per cent of the license fee both for the country liquor and the foreign liquor vends by way of security in order to get licences L-14A and L-2, respectively. By way of illustration, it may be stated that M/s Vijay Kumar and Company gave highest bid of Rs. 4,07,00,000 for L-14A licence. It deposited a sum of Rs. 88,18,400 as security in terms and conditions of the auction. Similarly, it

gave a highest bid of Rs. 2,60,56,226 for L-2 licence. A sum of Rs. 43,42,811 was deposited in terms of the auction. All the petitioners have received country liquor as well as foreign liquor from the respondents in accordance with the terms of the auction and the licences. Now they have sought a mandamus directing the respondents to pay interest to them on the amount deposited by them with the Governments in accordance with the conditions of auction. The petitioners have founded their claim on the premise that they are required to pay interest at the rate of 1.5 per cent per month for the whole amount of instalment in case of delay in the payment of the instalment beyond 15th day of the month, apart from the threat of closure of the vend and, therefore, they should also be paid interest on the amount deposited by them before issue of the licences. The petitioners have pleaded that once the Governments have transferred their right to sell liquor to them, the security money cannot be used by the Governments without payment of interest. The petitioners have placed reliance on the directions given by the Departments of Forest, Food and Supplies and Local Bodies for levy of octroi etc. and have submitted that if in other contracts interest is payable on the security deposited, there is no reason why the Governments should not pay interest to them on the huge amount deposited by them in the form of security. Reliance has also been placed by the petitioners on the provisions of the Interest Act, 1978, the Negotiable Instruments Act, 1881, Section 34 of the Code of Civil Procedure and the common law principles. The petitioners have contended that the Governments have been earning interest by retaining their money and, therefore, in equity also, they are entitled to receive interest on the security deposits.

(3) In their reply to Civil Writ Petition No. 18432 of 1995, the respondents have challenged the *locus standi* of the petitioners to seek writ of *mandamus* on the ground that after having entered into a contract, the petitioners cannot challenge the conditions incorporated in the contract or claim interest on the amount deposited by it. The respondents have pleaded that the amount deposited by the petitioner is in the nature of advance licence fee in respect of the liquor vends auctioned in its favour and no interest is payable either under the terms of the excise policy or under the terms and conditions of the auction. The respondents have asserted that it would have been perfectly legitimate for the Government to call upon the bidders to pay the entire licence fee in advance before the commencement of the business because the Government could insist on fulfilment of a particular condition as condition precedent to the transfer of its exclusive right to deal in liquor and after having entered into a contract with the Government, the petitioner cannot claim that it has been subjected to discrimination. The respondents have further

stated that the total bid money is recoverable in eleven instalments out of which Licensee is required to pay nine instalments upto the month of December and balance 10th and 11th instalments are ordinarily adjustable against the initial amount deposited by the petitioner as per the terms and conditions of the auction subject to the forfeiture clause. The respondents have seriously disputed the claim of the petitioner to be awarded interest on the principle of common law or equity as also on the basis of provisions of the interest Act, 1978 or the Negotiable Instruments Act, 1881. Replies filed on behalf of the Government of Punjab and the Union Territory of Chandigarh are also on similar lines. The Government of Punjab has pleaded that the amount required to be deposited by the petitioners is strictly not a security but is a part of the licence fee and if the conditions of auction were not acceptable to the petitioners, they were at liberty not to participate in the auction. According to the respondents, after having accepted the terms and conditions of auction and having given bids pursuant to those conditions, the petitioners cannot now claim that they should be paid interest on the amount deposited by them.

(4) All the learned counsel are in agreement that the provisions of the Punjab Excise Act, 1914 and the Rules framed thereunder are applicable to the grant of licences in the States of Punjab and Haryana and the Union Territory, Chandigarh. The Haryana Legislature made some amendment and separate Rules have been framed by the Government of Haryana in regard to the various matters covered by the provisions of the Punjab Excise Act, 1914. Section 34 of the Punjab Excise Act, 1914, falls in Chapter VI which relates to licences, permits and passes. This Section deals with fees for terms, conditions and form of and duration of licenses permits and passes. Sub-section (2) thereof refers to 'Security'. The same read as under :—

“34. Fees for terms, conditions and form of, and duration of licenses, permits and passes :—

(1) Every licence, permit or pass granted under this Act shall be granted :—

- (a) on payment of such fees, if any.
- (b) subject to such restrictions and on such conditions.
- (c) in such form and containing such particulars.
- (d) for such period, as the Financial Commissioner may direct.

- (2) *Security* : Any authority granting a licence under this Act may require the licensee to give such security for the observance of the terms of his licence or to make such deposit in view of security, as such authority may think fit."

Liquor Licences are granted in the State of Punjab under the Punjab Liquor Licence Rules, 1956, whereas in the State of Haryana, the same are governed by the Haryana Liquor Licence Rules, 1970. These rules are also almost *pari materia* and as the majority of the cases relate to the State of Haryana, we shall make reference to the provisions contained in the Haryana Liquor Licence Rules, 1970, which shall hereinafter be referred to as the 1970 Rules. Rule 2 of these Rules specifies the classes of licenses and authorities empowered to grant and renew them. L-2 licence is for wholesale and retail vend of foreign liquor to the public only. It has to be granted by auction or private contract. Collector is the competent authority and it is not renewable. L-14 licence pertains to retail vend or country spirit for consumption "on and off" the premises. It is also to be granted by auction or private contract. Collector is the competent authority in case of auction. Private contract can be granted by the Financial Commissioner. This licence is also not renewable. Rule 35 empowers the grant of these two licences on fee fixed by auction. Rule 36 contains the procedure for grant of licenses. For the purpose of these cases, it would be profitable to quote Rules 35 and 36(1), (4), (5), (25), (26) and (27) of the 1970 Rules :—

'35 *Auction* :—

The following licenses are granted on fee fixed by auction. The Financial Commissioner, however, reserves the right to grant licenses by private contract.

L.2, L.14, L.14-A and L.14-B.

36. Procedure for grant of licenses by auction :—

- (1) Subject to such changes as the Excise Commissioner may make in the number and location of excise vends each year before the annual auction, the minimum license fee for each group or vend, which shall be fixed by the Collector with the approval of the Excise Commissioner having regard to the estimated sales and other incidental factors pertaining to each vend. The minimum license fee so fixed for each group/vend shall be announced at the time of auction. If the Collector

proposes to close any vend, he shall submit his proposal, before the auction for the order of the Excise Commissioner :

Provided that in case a vend has to be closed down because of Court order, local resistance or for any other reason, the licensee shall have the freedom to open another vend within the Command area on the same terms and conditions. The closure of one or more vends in the Command area will not entitle him to any rebate or reduction in the license fee.

*Explanation* :—a group would comprise of a minimum of three and maximum of ten vends.

(i) to sub-rule (1), the following proviso shall be added, namely :—

Provided that in case of closure of any rural vend due to orders of any Court, or resistance of the residents of the village or any other sufficient cause, the licensee shall be allowed to operate the licence in any other village with the consent of the Gram Panchayat concerned falling within the Command area of the closed vend on the same terms and conditions on which it was auctioned. In the event of his failure to do so, a new vend shall be located there which shall be auctioned at the risk and cost of the original licensee and any loss occurred as a result of such auction shall be recoverable from him.

(4) The Collector shall give timely notice of the date and place of auction.

(5) Before the auction begins, the Presiding Officer shall read out the conditions to which auction is subject.

(25) A person to whom a liquor vend has been sold shall deposit by way of security an amount equivalent to 16½ per cent of the annual license fee (bid money) both for country liquor and foreign liquor. He shall have to pay a sum equal to 5 per cent (five per cent) of the total amount of his annual license fee in cash at the fall of the hammer and the remaining amount of 11½ per cent within a period of 10 days of the date



of auction or before 31st of March whichever is earlier. The entire amount of security of its ninety per cent as may be deemed proper by the Financial Commissioner shall be adjusted against the last instalments of license fee payable by him unless the same or any part thereof is forfeited or adjusted against any amount of fee or penalty due from him in respect of his licence. In addition, the successful bidder for a license of country liquor will have to deposit at the fall of the hammer an additional security equal to 2.5 per cent of the entire bid money in case the increase in bid money is more than 15 per cent but less than or equal to 20 per cent and other 2.5 per cent of the entire bid money, in case the increase in bid money is between 20 per cent and 25 per cent over the reserve price fixed for the vend/group of vends. The reserve price shall be fixed on the basis of the license fee for the preceding year in respect of all the vends that fall in the area of the group of vends to be auctioned.

The entire amount of additional security, including 1/3rd of the bid money deposited will be adjustable towards the last instalments of license fee.

In the event of the amount of security or any part thereof having been forfeited or adjusted the deficiency shall be made good by the licensee within seven days of the happening of such an event, failing which the license shall be liable to cancellation by the competent authority.

In case of adjustment of ninety percent amount of security, the remaining ten percent of security shall be refundable to the licensee after deducting therefrom any kind of arrears due to the Government from him after the close of the financial year.

(26) A person to whom the liquor vend has been sold shall pay by the 15th of the month in which he begins business under his license and by the 15th of every subsequent month, an instalment equal to one-eleventh of the total annual license fee till the entire license fee has been realised. Deputy Excise and Taxation

Commissioner of the district may authorise the licensee to deposit the amount of instalment or part thereof up to the last day of the month for which the instalment is due on the condition that the licensee pays interest at the rate of eighteen per cent per annum for the period from the twentieth day of the month to the date of payment of the instalment or any part thereof deposited after the due date. The date of payment shall be included in the period for which interest to be discharged. In case the instalment or any part thereof along with interest is not paid up to the end of the month, apart from closure of the vend, interest shall be charged for the whole month.

In the event of failure to pay the instalment or instalment along with the interest, as the case may be, by the due date, the vend shall cease to be in operation on the first day of the following month and shall ordinarily be sealed by the Deputy Excise and Taxation Commissioner or the District Excise and Taxation Officer Incharge of the district or any other official authorised by him and his licence may be cancelled.

(27) If any person whose bid has been accepted by the Presiding Officer at the auction fails to deposit the amount of security equivalent to 16% per cent of the total licence fee or refuses to accept the licence, the Collector or any officer not below the rank of Excise and Taxation Officer authorised by licence by the Financial Commissioner in this behalf, may resell it by public auction and any deficiency in licence fee shall be recoverable from the defaulting bidder as arrears of land revenue or land holding tax."

(4) We may also quote Para 6 of Annexure P-1 which deals with the requirement of deposit of 16% per cent of annual licence fee by way of security. The same reads as under :—

"6(i) The successful bidder shall deposit by way of security an amount equivalent to 16% per cent of the annual licence fee both for country liquor and Indian Made Foreign Liquor vends.

He shall have to pay a sum equal to five per cent (5 per cent) of the total amount of his annual license fee in cash at the fall of the hammer and the remaining amount of 11 $\frac{2}{3}$  per cent within a period of ten days of the date of auction on or before 31st March, 1995, whichever is earlier. The entire amount of security or its ninety per cent, as may be deemed proper by the Excise and Taxation Commissioner, shall be adjusted against the last instalments of license fee payable by him unless the same or any part thereof is forfeited or adjusted against any amount of fee or penalty due from him in respect of his licence.

In addition, the successful bidder for a license of country liquor will have to deposit at the fall of the hammer an additional security equal to 2.5 per cent of the entire bid money in case the increase in bid money is more than 15 per cent but less than 20 per cent and another 2.5 per cent of the entire bid money in case the increase in bid money is more than 20 per cent but less than 25 per cent over the reserve price fixed for the group of vends. The reserve price shall be fixed on the basis of the license fee for the year 1994-95 in respect of all the vends that fall in the area of group of vends to be auctioned for the year 1995-96. However, beyond 25 per cent increase, in order to check speculative bidding, the Presiding Officer may demand 1/3rd of the total bid money in cash or Bank Draft at the time of auction. The entire amount of additional security including 1/3rd amount will be adjustable towards the last instalments of the license fee. In the event of the amount of security or any part thereof having been forfeited or adjusted the deficiency shall be made good within seven days of the happening of such an event failing which the license shall be liable to cancellation by the competent authority.

In the case of adjustment of ninety per cent amount of security, the remaining ten per cent of the security shall be refundable to the licensee after deducting therefrom any kind of arrears if any due to the Government from him after the close of the financial year.

(ii) If any person whose bid has been accepted at the auction fails to make deposit of the amount of security in time or refuses to accept the licence, the licence may be resold by public auction or private contract by the competent

authority and any deficiency in license fee and all expenses of such resale or attempted resale shall be recoverable from the said person in the same manner as laid down in Section 60 of the Punjab Excise Act, 1914.

- (iii) The successful bidder granted a license shall pay by the 15th of the month in which he begins his business under his license and by the 15th of every subsequent month an instalment equal to 1/11th of the total annual license fee till the entire license fee has been realised.

In the event of his failure to pay the instalment or any part thereof by the due date, the Deputy Excise and Taxation Commissioner of the district concerned may authorise the licensee to deposit the amount of instalment or part thereof up to the last day of the month for which the instalment is due on the condition that licensee pay the interest at the rate of 1.5 per cent per month for the period of delay from the 15th of the month up to the end of the month. The date of payment shall be included in the period for which interest is to be charged. In case the instalment or any part thereof along with interest is not paid up to the end of the month, apart from closure of the vend, as given in next para, interest shall be recoverable for the whole month.

If the licensee fails to deposit the instalment along with interest, as the case may be, up to the last day of the month, the vend would cease to be in operation on the first day of the following month. The Deputy Excise and Taxation Commissioner of the district concerned or any other official authorised by him would ordinarily seal the vend(s) is/are not sealed and is/are allowed to operate then interest shall be charged on the arrears of license fee up to the date of the payment of the license fee for the total period starting from the 1st day of the month in which the fee was payable. This shall be in addition to the penalty provisions that may be brought into operation against the licensee under the Punjab Excise Act, 1914 and rules framed thereunder.

- (iv) In the event of cancellation of a licence for the wholesale and retail vend of foreign liquor to public and retail vend

of country spirit including Rum and Gin of 50 degree proof, the Collector may resell it by public auction in accordance with the procedure laid down in Rule 36(28) of the Haryana Liquor License Rules, 1970 and in addition he may prescribe the manner under which the license fee and the amount of security is to be realised."

(5) From the above quoted provisions of the 1914 Act, 1970 Rules and the conditions incorporated in the notice issued by the Government for auction of the licences, it is clear that the Government decided to invite bids for grant of licences by way of auction. While doing so, the Government made it clear that it would be necessary for the successful bidder to deposit in advance a sum equivalent to 16% per cent of the annual license fee meant for country liquor as well as the Indian Made Foreign Liquor vends—The mode of payment has also been indicated in para 6 of Annexure P-1. The petitioners knew it very well that if they were to give bid and it was found to be highest, they will be required to deposit a specified amount as a part of annual license fee before licence would be issued in their favour. The offer in the form of highest bid given by the petitioners was acceptable to the Government on fulfilment of the conditions specified in Annexure P-1. The petitioners volunteered to fulfil those conditions and thereafter the Government granted licence to them. The petitioners cannot, therefore, challenged the terms and conditions incorporated in Annexure P-1, and the conditions of the licence by arguing that they are arbitrary or unreasonable.

(6) The amount equivalent to 16% per cent of the annual license fee though described as security in the Act as well as the Rules and Annexure P-1, in substance it is a price payable by the person who seeks licence to sell liquor—both country liquor and foreign liquor. The Government is possessed with the exclusive privilege to deal in the liquor and, therefore, the one, who wants to get a licence to sell liquor has to pay a price for purchase of the privilege and it is not open to such person to subsequently plead that the conditions of the contract are arbitrary or unreasonable.

(7) In *Nashirwar v. State of Madhya Pradesh* (1), their Lordships made reference to an earlier decision in *Krishan Kumar Narula v. State of J & K* (2), and held that the State had the exclusive right or privilege of manufacturing and selling liquor, that it had the

---

(1) A.I.R. 1975 S.C. 360.

(2) A.I.R. 1967 S.C. 1368.

power to hold a public auction for granting the right or privilege to sell liquor, that traditionally intoxicating liquors were the subject matter of State monopoly and that there was no fundamental right in a citizen to carry on trade or business in liquor.

(8) In *Dar Shankar v. Deputy Excise and Taxation Commissioner and others* (3), a Constitution Bench reviewed the case law and then held :—

“In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in *Balsara's case* 1951 S.C.R. 682 = (A.I.R. 1951 S.C. 318), *Cooverjee's case* 1954 S.C.R. 873 = (A.I.R. 1954 S.C. 220) ; *Kidwai's case* 1957 S.C.R. 295 = (A.I.R. 1957 S.C. 414) ; *Nagendra Nath's case* 1958 S.C.R. 1240 = (A.I.R. 1958 S.C. 398) ; *Amar Chakroborty's case* (1973) 1 S.C.R. 533 = (A.I.R. 1972 S.C. 1863). and the *R.M.D.C. case* 1957 S.C.R. 874 = (A.I.R. 1957 SC 699) as interpreted in *Harinarayan Jaiswal's case* (1972)3 S.C.R. 784 = (A.I.R. 1972 S.C. 1816) and *Nashirwar's case* A.I.R. 1975 S.C. 360. There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants—its manufacture, storage, export, import, sale and possession. *In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants.*”

In the same very case, the Supreme Court reiterated that power of the Government to charge a price for parting with its right constitute the essence of the matter. While making reference to Sections 27, 34 and 59 of the 1914 Act, the Supreme Court observed :—

Section 27 of the Act recognises the right of the Government to grant a lease of its right to manufacture, supply or sell intoxicants. Section 34 of the Act read with Section 50 (d) empowers. The Financial

---

Commissioner to direct that a licence, permit or pass be granted under the Act on payment of such fees and subject to such restrictions and on such conditions as he may prescribe. In such a scheme, it is not of the essence whether the amount charged to the licensees is pre-determined as in the appeals of Northern India Caterers and of Green Hotel or whether it is left to be determined by bids offered in auctions held for granting those rights to licensees. *The power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter.* Nor indeed does the label affixed to the price determine either the true nature of the charge levied by the Government or its right to levy the same."

(9) The Supreme Court also rejected the theory that the license fee is a tax or fees as understood in common parlance of commercial transactions and held :—

"The distinction which the Constitution makes for legislative purpose between a 'tax' and a 'fee' and the characteristics of these two as also of 'excise duty' are well known. "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered" per Latham, C.J. in *Mathews v. Chickory Marketing Board*, 60 CLR 263, 276. A fee is a charge for special services rendered to individuals by some governmental agency and such a charge has an element in it of a *quid pro quo*. *Cammr. H.R.E. Madras v. Lakshmindra Thirtha Swamiar*, 1954 SCR 1005, 1041= (AIR 1954 SC 282 at P. 295). Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. *M/s Guruswamy and Co. v. State of Mysore*, (1967) 1 SCR 548=(AIR 1967 SC 1512). The amounts charged to the licensees in the instant case are, evidently, neither in the nature of a tax nor of excise duty. But then, the 'Licence fee' which the State Government charged to the licensees through the medium of auctions or the 'Fixed fee' which it charged to the vendors of foreign liquor holding licences in Forms L-3, L-4 and L-5 need bear no *quid pro quo* to the services rendered to the licensees. The word 'fee' is not used in

the Act or the Rules in the technical sense of the expression. By 'licence fee' or 'fixed fee' is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incident of a trading or business transaction."

(Ephasis supplied).

(10) The same issue has been again considered recently in *M/s Khoday Distilleries Ltd. v. State of Karnataka and others* (4). A constitution Bench of the Supreme Court again undertook a detailed review of the various judgments which have been discussed in *Har Shankar's case* (supra) as well as the subsequent judgments in *Lakhanlal v. State of Orissa* (5), *Sat Pal and Co. v. Lt. Governor of Delhi* (6), *Southern Petroleum and Chemicals v. State of Kerala* (7), *State of M.P. v. Nand Lal Jaiswal* (8), *Doongaji and Co. v. State of Madhya Pradesh* (9), *Synthetics and Chemicals Ltd. v. State of U.P.* (10), and culled out the principles on the subject. In para 73 of the judgment, the Supreme Court has summarised the principle Nos. (a) to (m). Principle Nos. (b), (c), (e), (h) and (j) are quoted below :—

“(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are abnoxious and injurious to health, safety and welfare of the general public, i.e. *res extra commercium* (outside commerce). There cannot be business in crime.

---

(4) J.T. 1994 (6) S.C. 588.

(5) (1977) S.C.R. 811.

(6) (1979) 3 S.C.R. 651.

(7) (1981) 4 S.C.C. 391.

(8) (1986) 4 S.C.C. 566.

(9) A.I.R. 1991 S.C. 1947.

(10) (1990) 1 S.C.C. 109.



(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence, the trade or business in liquor can be completely prohibited.

xx                      xx              xx              xx              xx

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

xx                      xx              xx              xx              xx

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

xx                      xx              xx              xx              xx

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited."

(11) It must, therefore, now be treated as concluded that the State has the exclusive privilege in the matters pertaining to the business of liquor and it is the State which can permit a citizen to carry on trade of liquor subject to specified limitation. It is also open to the State to adopt any mode of selling the licences for trade or business with the object of earning the maximum revenue

and it is also possessed with the power to prohibit or regulate the trade or business of the same and the mere fact that the State charges taxes and fees on trade or business of liquor does not make it a right to carry on trade or business in liquor, a fundamental right or even a legal right and a State can impose total prohibition. It must, therefore, be held that the method of grant of licence by asking the highest bidder to deposit a part of the licence fee in advance does not suffer from any inherent infirmity and after having entered into a contract, the petitioners cannot make a claim that the State has acted arbitrarily by demanding the cash security in the form of advance towards the license fee. We are also of the considered opinion that in such like contractual matters where the petitioners have purchased the right of the Government to trade in liquor, they are not entitled to complain of any arbitrariness by means of writ petition under Article 226 and there is no reasons whatsoever for this Court to exercise its writ jurisdiction to relieve the petitioners from the burden of depositing a part of the price of liquor in advance.

(12) We shall now deal with the argument of the learned counsel for the petitioners that the petitioners are entitled to interest because the Government holds their money in trust and in case of default on their part, the Government reserve a right to charge interest at the rate of 18 per cent per annum apart from taking punitive measures. We shall also deal with the argument of the learned counsel that the petitioners are entitled to be paid interest under the provisions of the Interest Act, 1978 or the Negotiable Instruments Act, 1881. Alternative argument of the learned counsel for award of interest on the principle of equity also deserves to be examined together with other contentions. We shall begin with the consideration of this branch of argument by restating that the amount deposited by the petitioners in the form of security is in reality the advance price paid by the petitioners as a part of the contract they had entered into with the Governments for being permitted to sell liquor during the year 1995-96. Describing the advance money as security is rather a misnomer. In fact, the Government could legitimately demand the entire price in advance and it would have been open to the petitioners not to give their bid for grant of licences. So far as the provisions of the Act and the Rules are concerned, they do not contain any provision for award of interest on advance money deposited by the petitioners. Annexure P-1 and the terms of the licence also do not contain any such stipulation. In the absence of such stipulation, the petitioners cannot

contend that they are entitled to the amount of interest at the rate of 18 per cent per annum merely because the Government is entitled to charge interest at that rate as and when they commit default in payment of the instalments. In fact, incorporation of a provision requiring the petitioners to pay interest in case of default in the payment of the instalments and absence of such a provision for payment of interest to the petitioners show that the Government had made it clear to the petitioners, even before they gave their bids that no interest would be payable to them on the amount of the advance license fee although they will be required to pay interest in case of failure to deposit the instalments.

(13) Chapter VI of the Negotiable Instruments Act, 1881 relates to payment and interest. Section 78 says that payment is to be made to the holder of the instrument. Section 79 deals with payment of interest when rate is specified. Section 80 relates to payment of interest when no rate is specified. These three Sections are reproduced for ready reference :—

“78. *To whom payment should be made* :—Subject to the provisions of Section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. *Interest when rate specified* :—When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. *Interest when no rate specified* :—When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instruments, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

*Explanation* :—When the party/charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.”

(14) A close look at the above-quoted provisions shows that all of them relate to instruments, promissory note and bill of exchange, and interest is payable on the specified rate or at 18 per cent per annum on the amount specified in the promissory note, bill of exchange or cheque. None of these provisions relates to payment of interest in a case where a person has been granted license and he is made to pay advance money as a part of contract for grant of licence. We, therefore, hold that on the basis of the provisions of the Negotiable Instruments Act, 1881, the petitioners are not entitled to claim interest.

(15) Coming to the provisions of the Interest Act, 1978, we may refer to Sections 2(c), 3 and 4 of that Act. These provisions are also reproduced below for ready reference :—

“2. (C). “debt” means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt ;

xx                      xxx                      xx                      xx                      xx

3. *Power of Court to allow interest* :—(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say :—

(a) if the proceedings relate to a debt by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings ;

(b) if the proceedings do not relate to any such debt, then from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings :

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) where, in any such proceedings as are mentioned in sub-section (1) :—

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, then the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,—

(a) shall apply in relation to—

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement ; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement ;

(b) shall affect—

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in Negotiable Instruments Act, 1881 ; or

(ii) the provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 ;

(c) shall empower the court to award interest upon interest.

4. *Interest payable under certain enactments* :—(1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of

any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the Court shall, in each of the following cases, allowed interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely—

- (a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract from the date of the deposit
- (b) where obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action
- (c) where money or other property is obtained or retained by fraud, from the date of the cause of action ;
- (d) where the claim is for dower or maintenance, from the date of the cause of action.”

(16) Section 3 relates to the power of the Court to allow interest for the recovery of any debt or damages. Section 4 deals with the payment of interest in all cases where it is payable by virtue of any agreement or other rule of law or usage having the force of law. Section 4(2) empowers the Court to allow interest from the date specified below to the date of institution of the proceedings at such rate which the Court may consider reasonable. The Court can also decline award of interest where money or property has been deposited as security for the performance of an obligation imposed by law or contract from the date of the deposit.

(17) What the petitioners want us to hold is that the amount deposited by them was a security for the performance of an obligation imposed by law or the contract. However, they have failed to show as to how the amount deposited by them could be treated as security for the performance of an obligation imposed by the law or contract. The amount, as already mentioned above, was simply a part of the price which the petitioners were required to pay for purchase of the right to sell liquor. It was an advance payment towards the license fee which is liable to be adjusted at the end of

the year. Therefore, neither under Section 3 nor under Section 4 of the 1978 Act, the petitioners can claim interest from the Government.

(18) In this connection, it will be useful to refer to the decision of the Supreme Court in *Ferro Alloys Corps. Ltd. v. A. P. State Electricity Board* (11). That was a case in which various consumers of electricity had put up claim for award of interest on the cash security required to be deposited by them as per the condition of supply. While holding that the object of the security was to ensure proper payment of bills, their Lordships negated the argument that as per the provisions of the 1978 Act, the petitioners were entitled to be paid interest. After making reference to Section 4 of the Interest Act, 1978, their Lordships held :—

*“This section has no application to a case where on account of a contractual term or a statutory provision payment of interest is not permitted.”*

The Supreme Court further held :—

*“A careful reading of Section 4(2) of the Interest Act would disclose that it merely enlarges the category of cases mentioned in Section 4(1). Even otherwise, there is nothing to indicate that Section 4(2) could override the statutory provisions or a contract between the parties. No doubt, Section 4(2) contains a non-obstante clause. But such a clause is restricted to the provisions of Interest Act and cannot extend to other laws or a contract between the parties.”*

The Supreme Court further held :—

*“The deposit made cannot be equated to a fixed deposit.”*  
The apex Court also considered the claim for award of interest in equity or common law. While rejecting the contention, the Supreme Court held :—

*“Strictly speaking, the word “interest” would apply only to two cases where there is a relationship of debtor and creditor, A lender of money who allows the borrower to use certain funds deprives himself of the use of those funds. He does so because he charges interest which may*

be described as a kind of rent for the use of the funds. For example, a bank or a lender lending out money on payment of interest. In this case, there is no relationship of debtor and creditor."

The Supreme Court also rejected the contention that because the Board charges interest on delayed payment, therefore, they are also entitled to award of interest. While doing so, the Supreme Court held :—

"It is the Board which should be entitled to receive interest on energy supplied to the consumers on credit as the consumers enjoy a credit facility as noted already. *We are also unable to accept the argument advanced on behalf of consumers that because the Electricity Boards charge interest on belated payment, interest must be paid on security deposits. Interest on belated payments is by way of penalty. That has no bearing.*"

(Emphasis supplied)

(19) The ratio of that judgment can appropriately be applied to these cases. The amount required to be deposited as advance money by the successful bidder for getting a licence is for the purpose of ensuring the timely payment of instalments of license fee. By its experience, the Government has felt that the licensee commit breach of the condition of auction and licence and the public revenue adversely suffers. Therefore, in order to ensure regular payment of the instalments and at the same time to secure the public revenue, the Government has made it obligatory for the successful bidder to deposit the advance money. The forfeiture clause contained in para 6 of Annexure P-1 is also necessary to protect the public revenue against unethical practices adopted by the licensees of not paying the instalments within the stipulated time. In such a case, the advance money deposited by the licensee can be utilised by the Government for compensating the loss to the public revenue. Precisely for this reason the licensee is required to make good the amount of cash security within seven days and failure of the licensee to do so may invite cancellation of the licence. It cannot, therefore, be said that the advance money is paid by the licensees for performance of any legal obligation or part of contract. Therefore, they cannot claim any interest. The right of the Government to Charge interest from the licensees in case of default of payment of instalments cannot be read as imposition of a corresponding obligation on



the Government to pay interest on the money deposited by the licensees.

(20) We may look at the matter from yet another angle. The money which the licensee deposits with the Government in the form of cash security is in fact a part of the public revenue. It is a part of the price which a licensee pays to the Government for getting a licence. Therefore, it would be highly anomalous if the Government is required to pay interest on the amount which is a part of the price of the privilege to sell liquor vesting in the Government and which the licensee purchases from the Government. The Government, in our considered opinion, cannot be made to pay interest on its own money merely because it is described as security under the provisions of the Act and the Rules framed thereunder or the conditions of the auction.

(21) On the basis of the above discussion, it is held that :—

- (i) There is no legal or fundamental right vesting in the petitioners to carry on trade or business in liquor and the Government is possessed with the exclusive privilege to sell liquor itself or through licensee ;
- (ii) The petitioners, who have accepted the conditions of auction and who have deposited the amount in the form of cash security (advance money) fully knowing well the terms and conditions of auction, have no *locus standi* to challenge those very conditions :
- (iii) The amount required to be deposited in the form of security is in reality a part of the price which the petitioners are required to pay for purchasing right to sell liquor from the Government ; and
- (iv) No interest is payable on the amount deposited by the petitioners either under the provisions of the Negotiable Instruments Act, 1881, the Interest Act, 1978, or in common law or equity.

(22) For the reasons mentioned above, the writ petitions are dismissed. Keeping in view the fact that the petitioners in Civil Writ Petition Nos. 18432, 18853 and 18854 of 1995 did not pay half of the amount of last instalment on the basis of the stay orders passed by this Court, we direct them to pay costs of Rs. 5,000 (rupees five thousand) each to the respondents.

---

R.N.R.