

Government Of Maharashtra And Ors vs M/S. Deokar'S Distillery on 10 March, 2003

Author: Ar. Lakshmanan

Bench: Chief Justice, Ar. Lakshmanan

CASE NO.:
Appeal (civil) 7399 2001
of 2 an

PETITIONER:
Government of Maharashtra and Ors.

RESPONDENT:
M/s. Deokar's Distillery

DATE OF JUDGMENT: 10/03/2003

BENCH:
CJI. & AR. Lakshmanan

JUDGMENT:

JUDGMENT WITH Civil Appeal No. 7400 of 2001 AND Civil Appeal No.1302 of 2003 (arising out of S.L.P. (C) No. 22142 of 2001) AR. 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 licencees, 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 proviso 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. SUC1091/197/Revised/1.1.96/13-A dated 30.7.1999 for carrying out provisions of Sections 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 Sections 58A and 114 of the Prohibition Act or Rule 17(43) of the Rules of 1966 and Rule 6(36) of the Rules of 1973?

The respondents 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 excise 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 proviso 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 Rules 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 Article 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. Vs. 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 judgment 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 vs. 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's 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 differences of supervision charges 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. Vs. 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 vs. 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 excise 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 petitioners to pay such amount of cost as determined by the respondents, appellants herein, in advance before the beginning of every quarter. This 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 licensee 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.

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 notices

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 petitions 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 petitions were filed by the Government of Maharashtra and others reiterating the contentions raised before the Bombay High Court.

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

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 distinguishing facts and circumstances, as submitted by the appellants in the case of the respondents and without considering certain other decisions 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 respondents. He further submitted that the High Court erred in not appreciating the proper effect of the concerned provisions and directions 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 Sections 11,12, 13 and 49 of the Act, which read as under:

"11. Notwithstanding anything contained in the following provisions of 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 that person by or on behalf of the State Government."

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 read 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.

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

(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 clause of persons or institutions from paying the whole or any part of the cost of such staff."

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 of the 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 FORM B.W.1 GRANTED UNDER THE RULES OF 1964 :

3. The licensee shall pay to the State 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 wr
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7399 OF 2001

Government of Maharashtra and Ors.

Appellant (s)

Versus

M/s. Deokar's Distillery
(s)

Respondent

WITH

AND

Civil Appeal No. of 2003
(arising out of S.L.P. (C) No. 22142 of 2001)

JUDGMENT

AR. 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 licencees, 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 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 provisions 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 the 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 Rules 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 given 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 rules, regulations and orders made thereunder from time to time.

Signature of the licensee/applicant"

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 proviso 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) They shall be deemed to have come into force on the 1st day of January, 1996."

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.

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 licensees 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 charges was effected during the previous years.

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 respondents on facts as well as in law.

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

1. Government of Andhra Pradesh vs. M/s Anabeshahi Wine and Distilleries Pvt. Ltd. reported in (1988) 2 SCC 25 (delivered on 16.2.1988).
2. J.E. Bilimoria & Sons vs. State of Maharashtra & Ors. reported in 1990 Mh.L.J. (II) 1079 (delivered on 1.8.1989).
3. Gustad Mayur Irani vs. State of Maharashtra & Ors. reported in 1991(51) ELT 232(Bom.) (delivered on 12.9.1990).
4. Mohan Meakin Ltd. & Anr. vs. 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 vs. 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. vs. State of Maharashtra).
7. Polychem Ltd. & Anr. vs. State of Maharashtra & Ors. reported in (1998) 6 SCC 196 (delivered on 4.8.1998) 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 vs. 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.

Mr. V.B. Joshi, learned counsel appearing for the respondents, in reply, submitted that the appellants while issuing demand notice did not consider the fact that the Excise duty is to be levied

on the basis of manufacturing cost and supervision charges which form part of the manufacturing cost and that the fact that the manufacturing cost is ultimately to be passed on the customers and, therefore, the manufacturers are not in a position to recover when the goods are already issued for sell and released from warehouse. He further submitted that the appellants are not entitled to recover the supervision charges retrospectively and that the supervision charges are paid well in advance at the beginning of every quarter and without payment of those charges, no manufacturing activities could be carried out. It was further submitted that the term "cost of the supervision charges" is not that equivalent to salary or wages and that the demand notice is without authority of law. He further urged that the appellants cannot recover the amount arbitrarily which is not just and proper and that since the demand notice is not legal and not maintainable, the same is not binding upon the respondents and, therefore, the respondents are not liable to pay the same and, therefore, the High Court of Bombay has rightly quashed the demand notice issued by the appellants. Mr. V.B. Joshi further urged that the question of law raised in the special leave petition is no longer res integra and it has been decided against the appellants in Polychem's case (supra). By these appeals, the appellants seek review of the aforesaid judgment of this Court long after the said judgment has become final. It was further submitted that it is totally incorrect for the appellants to submit that the decision of this Court in Polychem's case (supra) is liable to be read with the decision of the Full Bench of the High Court of Bombay in the case of Mohan Meakin (supra). It was further submitted that the Full Bench decision of the Bombay High Court upheld the view taken by the Division Bench of the same High Court in Gustad Mayur Irani's case (supra), wherein it has been held that the liability to pay the supervision charges and the quantum of two different concepts that the liability is not imposed with retrospective effect but merely reduced are revised with retrospective effect. According to the learned counsel, in Polychem's case (supra), this Court had considered the judgment of the Division Bench in Gustad Mayur Irani's case (supra) as well as the conflicting judgments of the Division Bench of the same High Court in the case of J.E. Bilimoria (supra). In other words, although the Full Bench judgment in Mohan Meakin's case (supra) was not brought to the notice of this Court while deciding the same question raised in Polychem's case (supra). The reasoning given in Gustad Mayur irani's case (supra) was considered and rejected by this Court. It was, therefore, submitted that in deciding Polychem's case (supra), this Court has impliedly overruled the decision of the High Court in Mohan Meakin's case (supra) and that the contention of the appellants that the said judgment of this Court is liable to be read with Mohan Meakin's case (supra) is without merit and deserves to be rejected. Mr. V.B. Joshi further submitted that when it has been conclusively held by the High Court that the rule making authority does not have the power to recover the supervision charges retrospectively, the appellants cannot rely on any rules enacted by any rule making authority to justify the retrospective demand which has been struck down by the High Court of Bombay.

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 respondent's factory 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 judgment 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 for parting with the privilege which privilege exclusively vested with the Government. Having considered the respective submissions, 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 had 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 follows:

"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 making 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 respondent-Company 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 Rules if it was not willing to pay the price as required 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 vs. Deputy Excise and Taxation Commissioner*. It was held that the amounts 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."

In the case of *J.E. Bilimoria (supra)*, the judgment was delivered on 1.8.1989 by the Nagpur Bench of the Bombay High Court. Seventeen writ petitions were filed challenging the authority of the respondent-State to recover excise duty on breakages 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 or 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 were revisions in salary of Government servants and some

audit objections were raised, the respondents started taking action for 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 staff 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. vs. Commercial Tax Officer reported in AIR 1977 SC 1459.

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 petitioner, 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 the 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 Anabeshahi Wine and Distilleries Pvt. Ltd. (supra) was cited before the Division Bench. The judgment rendered by the learned single Judge in W.P.No. 631/1982 (Maneckjee Majshedjee vs. 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 the said section enables the 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 facts and circumstances 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.

In the 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 negated the contentions of the petitioners 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 Mayur Irani (supra).

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 petitioners by its judgment dated 12.9.1990. There are, thus, two conflicting judgments 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.

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 vs. M.C. Poonnoose 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 facts 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 a 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.

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

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 power of the State Government to recover the supervision charges with retrospective effect. Before the learned single Judge, the decisions in J.E. Bilimoria's case, Gustad Mayur Irani's case and the Full Bench decision in Mohan Meakin's case were cited. The learned single Judge held that since 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 that 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) filed by Vidarbha Wine Traders dismissing the special leave petition were not cited. This Court observed as follows:

"As observed in (I.T.O. vs. 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 retrospectivity 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 could 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 judgments, the view taken in J.E. Billimoria case commends to us and we are of the view that the reasonings 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."

We may also be benefitted by the decision rendered by a Bench of three Judges of this Court in State Bank of Haryana & Ors. Vs. Jage Ram & Ors. reported in (1980) 3 SCC 599. In this case, the Excise and Taxation Commissioner, Haryana announced, by publication of a notice, that 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 along with the notice and in the auction held for the retail vend, the respondents offered the highest bid for a quota of 62,100 proof litres 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 litre. On the bid being knocked in their favour, the respondents deposited 1/24th of the total amount payable by them, by way of security for 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 instalments in a year and on default in payment of any instalment, 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 follows:

"Those who offer their 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 neither 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 a 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."

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 12 of Rule 6 of the Rules of 1973.

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 Rules of 1966 or under sub-rule 12 of Rule 6 of the Rules 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 estoppel, 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 of 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 other hand, the aforesaid Rules are to be read with other provisions 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.

This Court in Assistant Collector Central Excise vs. 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"

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.

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 petitioners, inter alia, direct to pay the supervision charges.

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 Sections 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.

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.

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 decisions 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).

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 vs. 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.

Inspite 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).

We have perused the judgment in Polychem's case(supra) which was delivered on the basis of a concession and incorrect information submitted by the learned advocate appearing for the State of Maharashtra. The above facts and the legal position 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 this 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."

It appears that the learned counsel appearing for the State of Maharashtra had not sought any instruction in the Polychem's 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.

This apart, the High Court has also not right in rejecting the writ petition of the respondents 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 Rules of 1988 and the consequential circular letter dated 30.7.1999 issued 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.

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 respondents ought to pay the amount demanded.

As pointed out by Y.V. Chandrachud, C.J., as he then was, what the respondents agreed to pay was the price of a 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.

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