IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 11815 of 2001

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M/s New Swadeshi Sugar Mills Limited (Proprietor: Oudh Sugar Mills Limited), At & P.O.-Narkatiaganj, P.S.-Shikarpur, District-West Champaran, through its Executive President, Madhusudan Sharma.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.

2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

<u>With</u>

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Civil Writ Jurisdiction Case No. 12007 of 2001

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M/s Vishnu Sugar Mills Limited, Harakhua, P.O.-Vishnu Sugar Mills, District-Gopalganj, through its General Manager, P.R.S.-Panicker.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.

2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

<u>With</u>

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Civil Writ Jurisdiction Case No. 12057 of 2001

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M/s New India Sugar Mills Limited, a company registered under the Indian Companies Act, 1956, having its registered office at 9/1 R.N. Mukherjee Road, Kolkata-700 001 and having its works At & P.O.-Hasanpur, District-Samastipur, through its Executive President Sri Ghanshyam Dhurka.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12065 of 2001

==

M/s H.M.P. Sugars Limited, At & P.O.-Naraipur, P.S.-Bagaha, District-West Champaran, through its Director, B.K. Mahanasaria.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12162 of 2001

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M/s Bharat Sugar Mills Limited, At, P.O. & P.S.-Sidhwalia, District-Gopalganj, through its Senior Executive Vice-President, B.K. Surekha.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.

2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12204 of 2001

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M/s Sasamusa Sugar Works Limited, At & P.O.-Sasamusa, District-Gopalganj, through its Factory Manager, Mohammad Rizwanullah.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.

2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12220 of 2001

==

M/s Motilal Padampat Udyog Limited (Sugar Mills Branch), At &

P.O.-Majhaulia, District-West Champaran, through its Executive Director, Shir R.N. Sharma.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Controller of Molasses-cum-Excise Commissioner-cum-Secretary, Government of Bihar, Department of Excise & Prohibition, Bihar, Patna.

.... Respondents

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Appearances :

(In CWJC No. 11815 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.
For the Respondents : Mr. (SC4)

(In CWJC No. 12007 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.
For the Respondents : Mr. (SC4)

(In CWJC No. 12057 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.
For the Respondents : Mr. (SC4)

(In CWJC No. 12065 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.
For the Respondents : Mr. (SC4)

(In CWJC No. 12162 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.

For the Respondents : Mr. (SC4)

(In CWJC No. 12204 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.

For the Respondents : Mr. (SC4)

(In CWJC No. 12220 of 2001)

For the Petitioner : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.

For the Respondents : Mr. (SC4)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

(Per : HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 24-11-2015

In all these writ applications, filed under Article 226 of the Constitution of India, challenge is to the Notification No. S.O. 242, dated 21.11.2000, issued by the Government of Bihar, whereby Rules, in purported exercise of power under Section 8(C) and Section 13(ff) of the Bihar Molasses (Control) Act, 1947 ***(hereinafter referred to as "the Act")***, have been framed for regulation of storage fund of molasses. These applications have, accordingly, been heard, with the consent of the parties, together, and are being disposed of by the present common judgment and order.

2. The petitioners are Companies within the meaning of Indian Companies Act, 1956, and are engaged in the State of Bihar, in business of manufacture of sugar by crushing sugar-canes.

3. The Molasses, which is obtained as bye-product in the process of manufacture of sugar, is an important raw material for production of alcohol. It is said to be susceptible to deterioration, because it is hygroscopic substance and, therefore, absorbs and retains moisture from the atmosphere. Once the quality of moisture deteriorates, it becomes unfit for the use of distilleries for production of alcohol. Therefore, if the Molasses are not properly conserved, the Industries, which consume Molasses, would be short of raw-material. This is one of the purposes why proper storage facilities of Molasses produced during the production of sugar, in sugar-mills, through crushing of sugar-canes, are required. Secondly, proper and scientific storage of Molasses is also required to contain its pollution potential. It has been stated, in the counter affidavit filed on behalf of the State of Bihar, that presence of high biochemical oxygen demand (BOD), large amount of total dissolved solids, high sulphates with no dissolved oxygen, etc., have the effect of depleting the dissolved oxygen of water if Molasses find its way into ponds, rivers, tanks etc. If stored in Katcha pits, there is possibility of it leading to contamination of both ground and surface water causing serious health hazards. It is in this background, *inter alia*, that the provisions have been made under the Act and Rules framed thereunder for Management and Regulations of Molasses obtained as a bye-product in the process of manufacture of sugar.

4. For the benefit of better appreciation of the dispute involved in these applications, Sections 8A, 8B and 8C of the Act, being relevant, are reproduced hereinbelow:-

> "***8A. Imposition of administrative charges on molasses.–*** *Notwithstanding anything to the contrary contained in Section 8, the State Government may in such manner and at such rates as may from time to time prescribe, impose on any sale of released molasses, charges for meeting the cost of establishment for supervision and control over such releases and such charges shall be recoverable from the purchaser thereof:*
>
> *Provided that the State Government may exempt or reduce the rates of charges in respect of sale of released molasses to distilleries outside the State of Bihar.*
>
> ***8B.*** *No stockiest of molasses shall*

engage in the business of sale or re-sale of molasses and hold stocks for that purpose except under the terms and conditions of licence granted by the Controller of Molasses in the form prescribed and subject to payment of licence fee as prescribed by the State Government from time to time.

8C. *Funds for regulation of adequate storage facilities in respect of molasses. – (i) Every owner, occupier and manager of sugar factory shall for the purposes of construction and maintenance, of adequate facilities for the storage of molasses, place in a separate fund such amount calculated at the rate as may be prescribed by the Government by notification :*

Provided that the amount as aforesaid shall not exceed one-third of the price received in accordance with the rate prescribed in the Schedule referred to in section 8-A.

(ii) The fund referred to in sub-section (i) above shall be accounted for, maintained and operated in the manner prescribed by rule framed in that behalf."

(emphasis added)

5. Section 13(ff) of the Act confers upon the

State Government, rule-making power, by way of notification, to carry out the purposes of the Act. By virtue of this power, State Government can, admittedly, *"prescribe the manner in which accounts of funds for regulation of adequate storage facilities in respect of molasses used in factories shall be maintained and operated"*.

6. The State Government, accordingly, in exercise of powers, conferred by Sections 8(C) and 13(ff) of the Act, has, vide notification, under challenge, dated 21.11.2000, framed Rules ***(hereinafter referred to as "the Rules")*** for regulating storage fund of molasses,. Rule 1 of the Rules provide for creation of ***"Molasses Storage Fund" (hereinafter referred to as "the Fund")***, with 1/3rd of the amount deducted from the price of molasses received by every sugar factory, in the State, to be jointly operated by the Manger of the sugar factory and the Assistant Commissioner of Excise/Superintendent of Excise of the concerned district. Rule 2 of the Rules provides for the procedure to be followed for payment of price of molasses, either in cash or by bank draft, by the allottees of molasses for supply of molasses from the sugar factory. Rule 2A of the Rules mandates that if the price of molasses is paid by bank draft, a separate bank draft shall be sent to the sugar factory for the price of molasses and bank draft for

1/3rd of the amount of price of Molasses shall be sent separately, wherein the name of sugar factory and Fund shall be endorsed, which shall be straightway deposited in the Fund. Rule 2B of the Rules prescribes that if the price of molasses is to be paid in cash, 2/3rd of the total price shall be deposited with sugar factory and 1/3rd in the Fund. The Rules prohibit the Officer-in-Charge of the sugar factory from allowing removal of molasses from the factory without ascertaining that 1/3rd of the total cash payment of the cost has been deposited in the Fund. Rule 7 of the Rules deals with utilization of the Fund and prescribes that the Fund shall not be utilized for any purpose save and except for construction and repairing of the molasses storage facilities and for abatement measures for control of pollution and/or any other *bona fide* developmental activities, which the Controller of molasses considers necessary. Sub-Rule (2) of Rule 7 of the Rules mandates that every sugar factory shall provide storage facilities for 70 % of the total production of molasses. Sub-Rule (4) of Rule 7 of the Rules requires sugar factories, having adequate storage arrangements for molasses, to construct steel tank within the period prescribed by the Controller of the molasses.

7. For the benefit of quick reference, Rule 7 of the Rules, which prescribes the mode and manner in which the fund is to be utilized, is extracted hereinbelow:-

> "***7.*** *Utilization of storage Fund:- (a) The amount deposited in storage fund shall not be utilized for any other purpose save and except for be construction and repairing of the molasses storage facilities as also it may spent on abatement measures for control of pollution and or any other bonafide developmental activities which the Controller of Molasses considers necessary.*
>
> *1. The Manager of the Sugar Factory shall submit a details report Regarding the construction of repairing of the molasses storage facilities prior to withdrawal of amount from storage fund. The Controller of Molasses shall sanction the withdrawal of amount after being fully satisfied by enquiry, and in all disputes arising out of this matter the decision of the controller shall be final.*
>
> *2. Every Sugar Factory shall provide storage facilities for 70 percent of the total production of Mollasses in the year.*
>
> *3. The Construction of steel tanks shall be done as per the specifications prescribed by the specification No. I.S.I. 5521, 1969 of*

I.S.I.

4. Sugar factories having in adequate storage arrangements for molasses shall have to construct steel tank within the period prescribed by the Controller of Mollasses.

Provided that the storage facilities in terms of steel tank shall not ordinarily excede 7 per-sent of the maximum production during the five preceding years.

5. In the event of defalt of the order issued under sub-rule 7(4-the Controller of Mollasses shall take appropriate action under the penal provision of the Bihar Mollasses (Control) Act, 91947.

6. The inspection of the construction work of Mollasses storage facilities as per rule 7(3) shall be carried out from time to time by the Controller of Mollasses or by any other Officer deputed by him.

7. It shall be imperative on the part of the part of the manager of all Sugar Factories to furnish all informations regarding Mollasses Storage arrangement of Storage fund whenever required by the Controller of Mollasses or by any Officer deputed by him."

8. Precisely speaking, the Rules, thus, provide for creation of a fund raised with the deposit of one third of the actual sale price of the molasses paid by the allottees/purchasers of the molasses to be operated jointly by the Manager of the sugar factory and Assistant Commissioner/Superintendent of Excise of the concerned district and to be utilized exclusively for the purposes prescribed under Rule 7 of the Rules and not otherwise.

Rule 7 (1) of the Rules requires the Manager of the sugar factory to submit a detailed report regarding the construction or repair of molasses storage facilities for withdrawal of the amount, which can be sanctioned by the Controller of Molasses after being, upon enquiry, fully satisfied. Every transaction, relating to deposit and withdrawal from the fund, is, evidently, thus, within the knowledge of the Manager/Officer-in-Charge of the factory and the competent officials of the Excise Department of the State Government including the purpose of its utilization as and when utilized.

9. The challenge to the Rules is primarily on the ground that according to Section 8(C) of the Act, the amount, for the purpose of being deposited in the Fund, is to be calculated at the rate as may be prescribed by the State Government by a notification, but the said Section 8(C) is controlled by the proviso, according to which, the amount cannot exceed 1/3rd of the price, received in terms of the rate prescribed in the Schedule, referred to in Section 8A of the Act. Section 8A of the Act confers upon the State Government the power to impose *'administrative charges'* on molasses. Section 8(C) of the Act, read with its proviso, in conjunction with Section 8A of the Act, leads us to a definite conclusion that prescription of rate, under Section 8(C), is dependent upon the price received under Section 8A of the Act, which deals with the administrative charges.

10. The is to be noted here that validity of Section 8A of the Act was put to challenge before this Court in case of ***"New Swadeshi Distilleries Vs. State of Bihar & Ors."*** and other analogous cases, reported in ***2010(4) PLJR 827***, as substituted by Bihar Molasses (Control) (Amendment and Validation) Act, 1999 ***(hereinafter referred to as "the Validating Act")***. Before amendment of Section 8A by substitution through Validation Act, Section 8A read as follows:-

> *"**Section 8A:** Imposition of administrative charges on molasses- notwithstanding anything to the contrary contained in Section 8, the State government may in such manner and at such rates as may from time to

time prescribed, impose on any sale of released molasses charges for meeting the cost of establishment for supervision and control over such releases and such charge shall be recoverable from the purchaser thereof.

Provided that the State Government may exempt or reduce the rate of charges in respect of sale of released molasses to distilleries outside the State of Bihar."

11. It appears from the decision of Division Bench of this Court in case of ***New Swadeshi Distilleries*** *(supra)*, that in exercise of rule-making power under the Act, the State of Bihar had earlier framed certain Rules, in the year 1965, making provisions for imposition of charges and fees through Rules 4A, 9A and 11A of the Rules. These Rules and the levy of administrative charges so imposed were challenged by the affected parties. The Rules were struck down on the ground of absence of legal sanction for such levy under the Act as it stood then by a Division Bench of this Court, by the decision reported in ***1975 BBCJ 397***, in case of ***"Bhola Nath Gupta and Ors. Vs. State of Bihar"***,. Thereafter, through Bihar Molasses (Control) (Amendment) Act, 1977, Section 8A was inserted in the Act, which empowered the State Government to impose administrative charges on molasses. "Released molasses", which was earlier defined under Section 2(f) of the Act, as *"such molasses, which is either considered surplus to the requirements of the distilleries of the State of Bihar or which is unfit for the use of such distilleries"*, came to be re-defined, as *"such molasses, which is allotted to any distillery of the State of Bihar or to the distilleries outside the State of Bihar or to any person"*.

12. In terms of Section 8A of the Act, the State Government issued notifications, prescribing rates for levy of administrative charges, which were payable on released molasses intended for supply to the distilleries of outside the State. Subsequently, by amendment notification, dated 20th December, 1995, administrative charges were sought to be imposed on the released molasses intended for supply to the distilleries within the State. The notification was put to challenge before this Court. A Division Bench of this Court in its decision, in case of "***M/s. S.K.G. Consolidated, Limited and Anr. Vs. The State of Bihar"***, reported in ***1997 BBCJ 387***, held the imposition of administrative charges to be illegal. Noticing the provisions under Section 8A of the Act and the definition of *"released molasses"*, under Section 2(f) of the Act, this Court held that for the purpose of imposition of administrative charges, two conditions were required to be satisfied, namely, (i) there must be an incident of sale, and (ii) the article forming the subject of sale must be *"released molasses"*. This Court held, in case of ***M/s. S.K.G. Consolidated, Limited*** *(supra)*, that molasses sold to the distilleries, within the State of Bihar, was required to be deleted from the definition of *"released molasses"*. The Court also held that in case of captive consumption of molasses, there would hardly be any question of sale. Accordingly, this Court, in the said case, directed for refund of the amount/adjustment, as such realization was without any legislative sanction. It was in this background that by the Validating Act, new definition of "released molasses" was given, as has been noted above. Through Section 3 of the Validating Act, Section 8A was substituted.

13. In order to validate the administrative charges already levied, calculated or paid in pursuance of notification, dated 20th December, 1995, following provisions by way of Section 4, were made:

> *"**4.** Validation of Collection of administrative charges. Notwithstanding any Judgment, decree or Order of any Court to the contrary, every notification issued or purported to have been issued under Rule 4A of the Bihar Molasses (Control) Rules, 1955, before the commencement of this Act*

shall be deemed to have been issued under Section 8A read with the provisions of clause (f) of Section 2 as amended by this Act and shall be so interpreted and be deemed to be always to have been valid as if the provisions of Section 2 and 3 of this Act, were in force at all material time, and accordingly anything done or any action taken (including any Order made, Proceeding taken, jurisdiction exercised, assessment made, or administrative charges levied, collected or paid or purported to have been done or taken in pursuance of any such notification shall be deemed to be, and always to have been validly and lawfully done or taken."

14. The validity of the said Validation Act came to be challenged before this Court, in case of ***New Swadeshi Distilleries*** *(supra),* as noted above. This Court had the occasion to test the legislative competence and rationality of levy of administrative charges to regulate and prevent misuse of molasses. The Division Bench of this Court, in case of ***New Swadeshi Distilleries*** *(supra)*, held that regulation fee must be only to meet the cost of regulation and not with a view to create substantial earning by the State. This Court struck down realization of administrative charges, as illegal, regardless of the Validating Act and held in Paragraphs 25, 26 and 27 of the judgment as follows:-

> "***25.*** *The regulating fees must be only to meet the cost of regulation and not with a view to create substantial earnings for the State because as per the aforesaid constitution bench Judgment if the revenue earning is substantial it may not be justifiable as a fee.*
>
> ***26.*** *We have no hesitation in following the aforesaid view of the Supreme Court in the case of Synthetics and Chemicals Ltd. and to hold that although the administrative charges are in the nature of a tax because presently this burden is being passed on to the buyer or the consumer, but that alone will not affect the legislative competence of the State legislature to impose a regulatory fee. Hence the issue of legislative competence is decided in favour of the State.*
>
> ***27.*** *In spite of direct challenge by the Petitioners that the imposition of administrative charges cannot be justified without reference to the actual cost of supervision and establishment*

<u>for the control and supervision in respect of released molasses, the State has not been able to justify the rate of fees imposed by it. It has suppressed all facts and figures in this regard. Hence, the imposition of substantial fee in the garb of administrative charges cannot be justified only by holding the fee in question to be regulatory and within the legislative competence of the State. On this ground the challenge to the levy and realisation of administrative charges from the Petitioners requires to be struck down</u>. The Validating Act cannot protect the imposition of substantial impost in the garb of regulating fees. The Validating Act by its nature can only validate a transaction for which the legislature has the competence. As held earlier, in the present case the legislature has legislative competence not to levy substantial amount of revenue by way of tax in respect of transaction in question but, only to impose reasonable fee to meet the cost of regulation. Hence, by a Validating Act the State of Bihar cannot confer upon itself a power to impose unlimited revenue in the garb of fee when there is no specific entry providing for levy of such tax by the State legislature. <u>Hence, regardless of</u>

the Validating Act, the levy and realisation of the administrative charges are struck down as illegal. But this shall be only prospective inasmuch as the administrative charges realised already as per the Validating Act shall not be refundable and since the Notification dated, 22nd December, 1995 has been made valid from the date of its issuance, the administrative charges leviable and realisable under that Notification till the date of this Judgment can only be realised by the State of Bihar but, for the period after the date of this Judgment the State of Bihar cannot levy the administrative charges under the impugned provisions of the Act till a Notification is issued afresh giving estimate of expenses likely to be incurred over regulation mechanism which alone can be realised as administrative charges even on approximate estimates. The rates for the administrative charges must be notified afresh in the light of such reasonable estimate. Once such fresh notification is issued by the State of Bihar, administrative charges may be realized in accordance with law from the date of such fresh notification."

(emphasis added)

15. No notification, as required in the decision of this Court, in case of ***New Swadeshi Distilleries*** *(supra),* has till date been issued by the State of Bihar, as contended by the petitioners, and nothing has been brought to our notice by respondent-State of Bihar to controvert this stand.

16. Mr. Y.V. Giri, learned Senior counsel, appearing on behalf of the petitioners, while assailing the said Rules, requiring deposit of 1/3rd of the amount of the price of molasses received by the sugar factories in the Fund, has submitted, referring to Section 8(C) of the Act, that rate of deposit of molasses storage fund will depend upon the rate of administrative charges, leviable under Section 8A of the Act. He contends that unless, in terms of the Division Bench decision of this Court in case of ***New Swadeshi Distilleries*** *(supra),* rates for administrative charges are prescribed and fixed by using appropriate notification, Rules, framed under Section 8(C) of the Act, cannot be said to be workable. Mr. Giri, learned Senior counsel, has further contended that whereas Section 8(C) of the Act provides that the amount to be deposited in the Funds shall not exceed 1/3rd of the price received in accordance with the rate prescribed in the Schedule, referred to in Section 8A of the Act, sugar factories are, by the Rules under challenge being made to deposit $1/3^{rd}$ of the total price received on sale of molasses, which is unauthorized, illegal and arbitrary. According to him, the State Government, by issuing the impugned notification, has exceeded the rule-making power conferred upon it under Section 8C of the Act. It is his plea that fixation of $1/3^{rd}$ price of the molasses, as the amount to be deposited in the Fund, without any definite mechanism partakes the nature of tax. He has given much emphasis on the Division Bench decision, in case of ***New Swadeshi Distilleries*** *(supra)*, wherein this Court has held that the State of Bihar cannot levy administrative charges under the Act till the notification is issued afresh giving estimate of expenses likely to be incurred over regulation mechanism, which alone can be realized as administrative charges, even on approximate estimate. According to Mr. Giri, learned Senior counsel, till date, no notification has been issued under Section 8A of the Act, and in the absence of such notification, no rate can be prescribed for working of Section 8(C) of the Act, which is evidently dependent on Section 8A of the Act.

17. Learned counsel, appearing on behalf of the State of Bihar, on the other hand, has not disputed the contention, as raised on behalf of the petitioners, that no notification, as required in the light of Division Bench decision of this Court, in case of ***New Swadeshi Distilleries*** *(supra)*, has been issued.

18. We find from the order-sheet of the present proceedings that by an order, dated 04.08.2011, the petitioners were given an opportunity to file an affidavit stating the details of the amounts of the fund utilized so far. The order reads thus:-

> ***"04.****08.2011. Mr. Y. V. Giri for the petitioners, and Mr. Devendra Kumar Sinha, learned Additional Advocate General No.2, are present. Learned counsel for the petitioner prays for a reasonable adjournment to enable him to file an application for amendment of pleadings. He may also bring on record facts and figures to show, inter alia, that in view of operation of the Rules made under the provisions of the Bihar Molasses (Control) Act, 1947 (hereinafter referred to as 'the Act'), enormous amounts of the company has needlessly remained locked up over the years as per the provisions of rules 1 and 2 of the Rules which is interfering with production and business of the petitioner company. The affidavit shall also state the amounts utilized over the years".*

19. When these matters were taken up earlier, on 05.03.2012, following order was passed by this Court:

> *"Inter alia, a submission has been made that restrictions upon withdrawal from the molasses storage fund are unreasonable restrictions in terms of Article 19 (6) of the Constitution of India. Further submission is that the State cannot be permitted to deduct 1/3 rd prices of the molasses separately for the funds without putting any ceiling on account of anticipated need of particular storage or factory.*
>
> *The relevant rules have now operated for more than a decade. Hence, the State is directed to meet the aforesaid submission on the basis of facts and figures in respect of each of the petitioner so as to show the present status of the fund and past withdrawal for the permitted purposes as well as the anticipated requirement to any reasonable limit. Such particular in respect of individual petitioners along with any other relevant materials should be made available to the Court by the next date.*
>
> *Put up for further hearing after six weeks.*
>
> *Let as copy of this order be*

furnished to learned AAG-2 for communication."

20. Neither the petitioners nor the State of Bihar have furnished any information to this Court in terms of the aforesaid orders, dated 04.08.2011 and 05.03.2012.

21. Till date, no material has been made available to this Court to show the present status of the Fund and past withdrawals for the permitted purposes as well as anticipated requirement. We are, thus, compelled to deliver this judgment in the absence of any information being furnished to this Court as required vide orders, dated 04.08.2011 and 05.03.2012

22. We find substance in the submission made on behalf of the petitioners on the clear reading of the provisions, as contained in Section 8(C) of the Act, that rate for deposit in the Fund is dependent upon the rate of administrative charge leviable under Section 8A of the Act. Till appropriate notification is issued prescribing the rate leviable for administrative charges, it would be impermissible, rather impossible to determine the rate of deposit under Section 8(C) of the Act.

23. In view of the discussions, as above, we are of the considered view that till the State Government comes out with a notification, as held by this Court, in case of ***New***

Swadeshi Distilleries *(supra)*, for the purpose of fixing the rates of administrative charges, even on approximate estimates, it would be wholly illegal to fix the rate of amount to be deposited in the Fund for the rates have nexus with the rate of the administrative charges leviable under Section 8A of the Act. We, accordingly, strike down the impugned notification, dated 21.11.2000, framing Rules, in exercise of power under Sections 8A and 13(ff) of the Act as *ultra vires* Section 8(C) of the Act.

24. In the facts and circumstances, we do not feel inclined to pass any order for refund of any amount, deposited by the petitioners, in the Fund. In the facts and circumstances of the present case, striking down of the notification, under challenge, shall have prospective effect.

25. These writ applications stand allowed, accordingly.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ. : I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

U			