

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18863 of 2015

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1. Md. Daud Khan Son of Md. Sabir Ahmed Resident of Islam Nagar, P.S
Nawada, District Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition
Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18916 of 2015

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1. Ashok Kumar son of Sri Bundi Mahto resident of Marul Roh, Nawada,
P.S. Nawada, District – Nawadah Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition
Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18877 of 2015

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1. Vinay Kumar son of Shri Mithilesh Swanker, resident of Line Par
Mirjapur, P.S. Nawada, District- Nawadah Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition
Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18865 of 2015

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1. Gopal Prasad son of late mani Lal resident of Village Main Road, P.S
& PO Nawada, District Nawadah Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition
Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

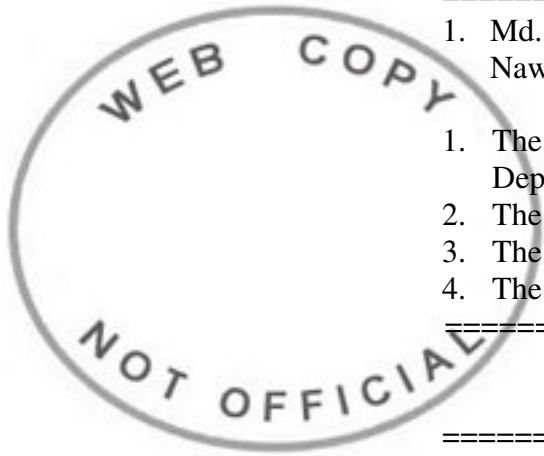
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With

Civil Writ Jurisdiction Case No.18945 of 2015

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1. Satish Kumar Son of Shri Anchh Mahto, Resident of Village -



Piparkhud, P.S. - Akbarpur, District – Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18921 of 2015

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1. Dayanand Sharma son of Shri Nawal Kishore Singh resident of Village Aanti, P.O. & P.S. Kadirganj, District Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18946 of 2015

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1. Vikash Kumar Son of Shrinandan Prasad Singh, Resident of Village - Amaon, P.O. & P.S. - Akabarpur, District - Nawada.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18867 of 2015

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1. Suresh Prasad son of Sri Shivendra Prasad Resident of Beldari Badita ,Giriyak ,Ps.Giriyak,District Nawadah Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar,Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18914 of 2015

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1. Krishna Kumar Bhagat son of Shri Badri Narayan Bhagat resident of Village Bhadalbni P.O. & P.S. Nawada, District Nawada.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition

- Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.1081 of 2016

1. Anil Kumar son of Sri Naval Kishore Sharma, resident of Mohalla/Tola-New Area, P.S.- Nawada, District- Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.19234 of 2015

1. Anil Yadav Son of Sri Yashudev Yadav resident of Maanpur, P.S. Giriyak, District Nalanda Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.19591 of 2015

1. Piyush Kumar son of Shri Gopal Prasad, resident of village Main Road, P.O & P.S. Nawada, District Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

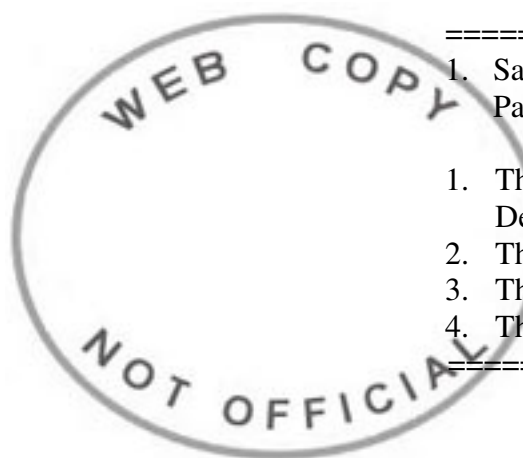
With

Civil Writ Jurisdiction Case No.18895 of 2015

1. Lalan Prasad son of Late Shiv Shankar Prasad, resident of Village Kouakol, P.S Nawadah, District Nawadah Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada. Respondents



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With

Civil Writ Jurisdiction Case No.18947 of 2015

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1. Sanjay Yadav Son of Late Ramswoop Yadav, Resident of Village - Pakri, P.O. & Pakriwarawan, District – Nawada Petitioner
- Versus
1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
 2. The Excise Commissioner, Bihar, Patna.
 3. The Collector, Nawada.
 4. The Superintendent of Excise, Nawada Respondents
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With

Civil Writ Jurisdiction Case No.18937 of 2015

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1. Rajiv Ranjan Bharti Son of Sri Shoukhi Mahto resident of village - Kadirganj, P.O. & P.S. Kadirganj, District - Nawada Petitioner
- Versus
1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
 2. The Excise Commissioner, Bihar, Patna
 3. The Collector, Nawada
 4. The Superintendent of Excise, Nawada Respondents
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With

Civil Writ Jurisdiction Case No.18991 of 2015

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1. Krishna Prasad son of Shri Bindeshwari Mahto, resident of Village Loharpur, P.O & P.S. Nawada, District Nawada Petitioner
- Versus
1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
 2. The Excise Commissioner, Bihar, Patna.
 3. The Collector, Nawada.
 4. The Superintendent of Excise, Nawada Respondents
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With

Civil Writ Jurisdiction Case No.18990 of 2015

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1. Santosh Kumar son of Sri Chandrika Prasad, resident of Village Gonawan, P.S. Nawada, District Nawada Petitioner
- Versus
1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
 2. The Excise Commissioner, Bihar, Patna.
 3. The Collector, Nawada.
 4. The Superintendent of Excise, Nawada Respondents
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With

Civil Writ Jurisdiction Case No.18900 of 2015

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1. Uday Prasad Keshri son of Shri Subhash Prasad Keshri, resident of Village Kadirganj, P.O. & P.S. Kadirganj, District Nawada.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada

.... Respondents

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With

Civil Writ Jurisdiction Case No.18881 of 2015

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1. Kamlesh Kumar son of Sri Surendra Singh, resident of Village Kochganv, P.S. Warishaliganj, Nawada

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada

.... Respondents

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With

Civil Writ Jurisdiction Case No.18890 of 2015

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1. Shailendra Kumar son of Shri Bishwanath Mahto, resident of Village- Pachrukhi, P.O. & P.S. Akbarpur, District Nawada.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada

.... Respondents

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With

Civil Writ Jurisdiction Case No.18936 of 2015

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1. Dinesh Kumar Son of Shri Ramdhani Prasad resident of Vijay Nagar, P.S. Nawada, District – Nawada

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada

.... Respondents

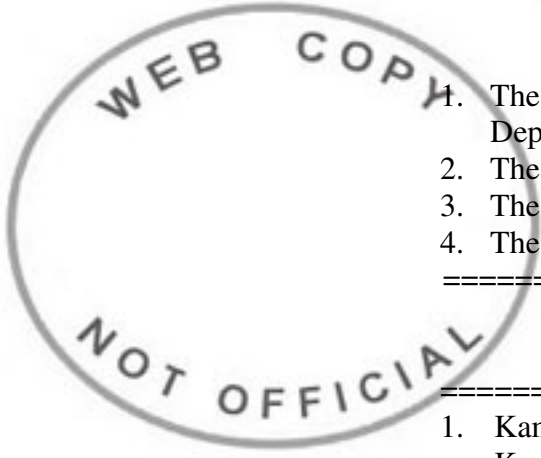
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With

Civil Writ Jurisdiction Case No.18866 of 2015

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1. Ratan Yadav Son of late Deoki yadav Resident of Village- Akauna



Bazar, Po & P.s and District Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Nawada.
4. The Superintendent of Excise, Nawada Respondents

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With

Civil Writ Jurisdiction Case No.18983 of 2015

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1. Ranjit Kumar son of Shri Awadh Behari Prasad, resident of Village- Rajendra Nagar, P.O. & P.S.- Nawada, District- Nawada.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
 2. The Excise Commissioner, Bihar, Patna.
 3. The Collector, Nawada.
 4. The Superintendent of Excise, Nawada Respondents
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With

Civil Writ Jurisdiction Case No.19624 of 2015

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1. Chunchun Kumar son of Late Ramkhelawan Singh resident of Village Gonawan, P.O. & P.S. Nawada, District Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
 2. The Excise Commissioner, Bihar, Patna.
 3. The Collector, Nawada.
 4. The Superintendent of Excise, Nawada. Respondents
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With

Civil Writ Jurisdiction Case No.18938 of 2015

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1. Amit Kumar Sinha Son of Shri Suresh Kumar Verma resident of village - Panjiyar Tola, P.O. & P.S. Nawada, District - Nawada

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
 2. The Excise Commissioner, Bihar, Patna
 3. The Collector, Nawada
 4. The Superintendent of Excise, Nawada Respondents
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With

Civil Writ Jurisdiction Case No.19738 of 2015

=====

1. Shrawan Kumar Son of Late Jaideo Prasad Resident of village - Nemdarganj, P.O. & P.S. Akbarpur, District - Nawada

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.18940 of 2015

1. Abhishek Pandey Son of Shri Shaligram Pandey resident of village - Aanti, P.O. & P.S. Kadirganj, District – Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.19003 of 2015

1. Manoj Kumar son of Sri Kishori Yadav, resident of village- Mirjapur Line Par, P.S. Nawada, District- Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.19005 of 2015

1. Vindeshwari Prasad son of Late Doman Mahto, resident of village- Dedaur, P.O. & P.S.- Akounam Bazar Mufassil, District- Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

With

Civil Writ Jurisdiction Case No.18934 of 2015

1. Umesh Prasad Son of Sri Lakhan Mahto resident of Morma, P.S. Roh, District – Nawada Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, Patna

2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nawada
4. The Superintendent of Excise, Nawada Respondents

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Appearance :

(In all the cases)

For the Petitioners : Mr. Satyabir Bharti, Advocate

For the Respondents : Mr. Lalit Kishore, PAAG I

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date : 30.09.2016.

The writ petitioners were granted licence for retail liquor shop, in the district of Nawadah, for the financial year 2014-2015, under the terms and conditions contained in Excise Form 127, as per the excise policy for retail licence, 2007, and Bihar Excise (Settlement of Licenses for Retail Sale of Country Liquor/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor Shop) Rules, 2007 (hereinafter referred to as 'the Settlement Rules, 2007'). The retail licence was valid for the period 01.04.2014 to 31.03.2015. On completion of the period of licence, the petitioners claimed refund of security deposit furnished by them at the time of grant of licence as they had paid the entire licence fee and had lifted the entire quota of liquor.

2. Instead of returning the security deposit, the



Excise Superintendent, Nawadah, directed recovery of *movement fees* on account of short lifting of *minimum guarantee quota* with stipulation that only on deposit of the amount due against the *movement fees*, application for refund of security money would be entertained.

3. Being aggrieved, the writ petitioners have filed the present writ applications challenging the order of the Excise Superintendent, Nawadah, directing recovery of *movement fees*. For instance, the reliefs prayed for in one of the writ petitions, bearing C.W.J.C. No. 18863 of 2015 (Md. Daud Khan Vrs. The State of Bihar & Ors.), which is akin to the relief sought for in other writ petitions, is produced hereinbelow by way of illustration :

“Issuance of writ of certiorari, quashing the order, dated 05.10.2015, as contained in Memo No. 907 (Annexure 5) as also the orders both dated 28.11.2015, contained in Memo No. 1053 and 1065 respectively (Annexures 5/1 & 5/2) passed by the Superintendent of Excise, Nawadah, by which an order has been passed directing recovery of a sum of Rs.39704.00 against *movement fees* on account of short lifting the *Minimum guarantee quota* in the month of February and March, 2015 and accordingly it has been directed that only upon deposit of the aforesaid sum of money, application for refund of security money shall be made.”

4. The issue is : *Whether the respondents could*



demand movement fees on the unlifted minimum guarantee quota of liquor under the retail Settlement Rules, 2007? On 07.06.2007, the State Government notified new excise policy for retail licence (Annexure 2), whereunder it was decided that the annual licence fee shall be determined on the *minimum guarantee quota* by including the excise duty payable on foreign liquor/country liquor/spiced country liquor for retail out-let shops. For instance, in case of foreign liquor shops including composite liquor shops, it was directed that annual *minimum guarantee quota* shall be determined at the rate of Rs.150/- per LPL and, in case of country made liquor shop, it was Rs.70/- per LPL. The policy, made in the year 2007, was partly modified in the year 2010, vide notifications, dated 08.10.2010 (copy of notifications, dated 07.06.2007 and 08.10,2010, are annexed as Annexures 2 and 2/1). In order to give effect to the policy so modified, the State Government framed the Bihar Excise (Settlement of Licenses for Retail Sale of Country Liquor/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor Shop) Rules, 2007. Thus, it would be necessary to notice the relevant provisions, which would be essential for deciding the issue.

5. Rule 2(m) defines annual *minimum guarantee*



quota as **“the minimum quantity of guaranteed country liquor/spiced country liquor, foreign liquor and beer as determined by the licensing authority under general or special direction issued by the Commissioner of Excise and to be lifted from wholesale warehouse of any other place specified by the Commissioner of Excise during an excise year or part thereof for the purpose of retail sale by licensee”.**

6. Rule 3 States that license fee be fixed for each of the retail shop as mentioned in the sale notification.

7. Rule 7 provides for issuance of sale notification in Excise Form 127, which would include the general terms and conditions of settlement.

8. Rule 11 provides for payment of $1/12^{\text{th}}$ of annual licence fee to be paid as security money and an equivalent amount $1/12^{\text{th}}$ of annual licence fee to be deposited as advance licence fee.

9. Rule 15 provides for payment of $1/12^{\text{th}}$ of the annual licence fee to be paid as security money and an equal amount, i.e., $1/12^{\text{th}}$ of the annual licence fee to be deposited as advance licence fee.

10. Rule 19 provides for Monthly division of Annual Minimum Guarantee Quantity and its Lifting. The Rule states

thus : :

“The minimum guarantee quantity of liquor for the whole year shall be divided in twelve equal installments and the licensee shall have to lift one part thereof every month. If the license is settled after commencement of that year, the minimum guarantee quantity and monthly division, accordingly, shall be determined proportionately. A licensee can lift minimum guarantee quantity of any month till the last working day of that month. If on account of any unavoidable reason he does not lift the full quantity prescribed for the said month, the licensee may make request in writing to add the quantity, not lifted in the monthly quota of the next month. In such circumstance, the quantity on adding reminder of last month in the monthly quota of next month will be treated as monthly quota.”

11. Rule 20 provides lifting of liquor and their price, which reads as follows :

“Rule 20 : Lifting of liquor and their price – The licensee of country liquor/spiced country liquor and foreign liquor will obtain pass from the Assistant Commissioner of Excise/Superintendent of Excise of the District for lifting the liquor from the godown of the wholesale.”

“Provided that in no circumstance such monthly quota shall be more than double of the fixed quota of one month but the balance quantity of the month of March shall not be lifted in the month of April. The monthly quota not lifted till the closing of the last working day of the month shall be *forfeited*

until a special permission to lift the same in subsequent month is given by the Assistant Commissioner of Excise or the Superintendent of Excise.”

12. Rule 21 deals with the refund of advance security amount fee of dues and claims of the State Government with regard to the settled shop already paid by the licensee.

13. Rule 24 provides that on violation of provisions of these Rules, the conditions of the sale notification or general conditions, applicable to vent licence, again, will be taken under Section 42 of the Bihar Excise Act.

14. Rule 105 B of the Rules, framed under Section 90 of the Bihar Excise Act, as incorporated by the notification, dated 10.03.2011, reads as follows :

“105 B – For the issuance of country liquor and Specified Country liquor the required pass may be issued on the realization of movement fee at the rate of Rs.10/- (Rupees ten only) per LPL on the quantity under issue.”

15. Similarly, Rule 106 D provides for levy of *movement fee* of issuance of pass for foreign liquor on realization of *movement fee* at the rate of Rs.12/- per LPL, which reads as follows :

“106 D – The necessary permit for supply of India Made Foreign Liquor and Beer may be issued to the

Retail licensee from the wholesale license premises if movement fee at the rate of Rs.12/- (Rupees twelve) per LPL for India Made Foreign Liquor and Rs. 12/- (Rupees twelve) per B.L. has been levied and realized by the issuing district.”

16. It would be equally relevant to notice Condition XV of the licence, which is reproduced hereinbelow for easy reference :

“The annual minimum guarantee quantity by the end of last working day of every month and subject to the provisions of Rule 19 of the Bihar Excise (Settlement of Licenses for Retail sale of Country/Spiced Country Liquor, Foreign Liquor, Beer and Composite Liquor Shop) Rules, 2007.”

17. Now that the provisions of law have been noticed, we would advert to the ground, on which the petitioners have challenged the recovery of *movement fee* on account of short lifting of *minimum guarantee quota* in the months of February and March, 2015. For the sake of convenience, we would refer to C.W.J.C. No. 18863 of 2015 (Mr. Daud Khan Vrs. The State of Bihar & Ors.) as the lead case.

18. The petitioner submits that he procured/lifted liquor in excess of annual *minimum guarantee quota* specified for his liquor shop. He lifted more than 100 per cent of annual *minimum guarantee quota* except that if the lifting figure is taken



on monthly basis, there were short lifting of quota in the months of February and March, 2015. He further submits that as the term of the licence was coming to an end on 31st March, 2015, he did not intend to have unsold stock as he was having sufficient quantity. He submits that in terms of Sale Notification as well as conditions of licence, the petitioner was to lift 1/12th of annual *minimum guarantee quota*, which was subject to Rule 19.

19. As noticed earlier, Rule 19 provides that if a licensee, on account of unavoidable reason, is not able to lift full quantity prescribed for the said month, the holder of licence may make request, in writing, to add the quantity not lifted, in the monthly quota of the next month, which would be treated as monthly quota of the next month. But, if the licensee still fails to lift the monthly quota till the last working day of the month, the same shall be *forfeited* until special permission to lift the same is given by the Assistant Commissioner of Excise or the Superintendent of Excise.

20. In the premises, indicated above, the learned Counsel for the petitioners submits that the authorities under the law could have, at the most, *forfeited* monthly quota of the liquor, but could not have charged *movement fees* on account of short lifting of *minimum guarantee quota* for the months of February



and March, 2015. The petitioners submitted that in terms of the provisions, contained in Rule 106 D, *movement fees*, at specified rate, is levied and realized for procurement of liquor from the wholesaler. In other words, if no pass or permit is obtained by retail licensee for procuring a particular quantity of foreign liquor, *movement fee* cannot be imposed or realized. It is, the further submission of the petitioners that they have lifted more than 100 per cent of annual *minimum guarantee quota* and have paid *movement fees* on the same. Hence, there is no loss of revenue to the respondents.

21. The petitioners lastly submit that the impugned order is without authority of law as well as in violation of the principles of natural justice as no hearing was accorded to them before raising the demand of *movement fees* on unlifted quota of annual minimum guarantee for some of the months

22. Mr. Lalit Kishore, learned Principal Additional Advocate General No. I, appearing for the State, justifying the impugned order, submits that as per the terms and conditions of the licence, the State has to secure annual *minimum guarantee quota* for each month for retail licensee irrespective of the fact, whether the retail licensee had lifted more than annual *minimum guarantee quota* in the earlier month, which the petitioner could

have, but as the petitioner did not lift the annual *minimum guarantee quota* for the same month, the respondents have incurred loss of *movement fees* and had they been informed in advance, they could have apportioned the quantity kept/reserved for the petitioners to some other use.

23. We have heard the learned Counsel for the parties and perused the relevant laws governing the issue in the case.

24. The issue is : *Whether the respondents would be entitled to charge movement fees on unlifted quantity of annual minimum guarantee quota from a retail dealer under the Settlement Policy retail sale of Country Liquor/Spiced Country Liquor/Foreign Liquor/Beer and Composite Liquor?*

25. A combined reading of Rule 19 of the Settlement Rules, 2007, read with Clause XV of the licence, would reveal that the only consequence for failing to lift the monthly *minimum guarantee quota* is *forfeiture* of the unlifted quota for the particular month.

26. Further-more, none of the provisions, either under the Excise Act or Settlement Rules, 2007, or the Sale Notification, empower the excise authorities to levy and collect any amount by way of *movement charges/fees* unless and until it



is covered by Rules 105 B and 106 D of the Settlement Rules, 2007; otherwise, it will partake the colour of tax under the constitutional law. The law is consistent that exaction of money by way of fees or otherwise levied by the State authorities, will partake the colour of tax. Equally, Article 265 of the Constitution of India prohibits levying of tax except under the authority of law. The present demand, made by the Excise Superintendent requiring the retail licensee to deposit *movement fees* on unlifted quantity of annual minimum guarantee, is wholly bad as the same suffers from lack of legislative sanction. On close look, Rule 19 reveals that the *movement fees*, at the specified rate, is levied and realized only if pass/permit is obtained by the retail licensee for procurement of liquor from the whole seller and not otherwise.

27. We would agree with the argument of the learned Counsel for the petitioners that the incident of levy of the *movement fees* or the pre-condition for levy of the said fee is issuance of pass, which has not happened or occurred in the present case.

28. Thus, no demand of *movement fees*, under Rules 105 B or 106 D, could have been raised upon the petitioners for unlifted quantity of annual minimum guarantee quantity.



29. It is relevant to state here that the Excise authorities are not competent to make any demand, which is not authorized by statutory provisions. The respondents have not been able to show any provision to us, which could even *prima facie* show that levy, in question, is authorized by any of the Rules or Conditions of the licence. Hence, the levy partakes the colour of tax and it amounts to compulsory exaction by the State by an executive fiat without any legislative sanction, which is impermissible in law.

30. While dealing with a similar issue, forfeiting security money for not lifting *minimum guarantee quota*, a Division Bench of this Court, in the case of **Rajesh Kumar Singh Vrs. the State of Bihar & Ors., reported in 2011(4) P.L.J.R., 703**, disapproving the action, of the State, in paragraph observed as follows :

“Thus, the only action available to the State Government for breach of condition of lifting minimum guarantee quota was a proceeding for cancellation or suspension of licence under Section 42(1)(c) of the Act and consequently forfeiture of the security deposit under Section 42(4) of the Act. Admittedly, the respondents did not select to proceed against the petitioner under Section 42 of the

Act; instead they chose to resort to Section 68 of the Act.”

31. Again, a Division Bench of this Court in the case of **Rakesh Yadav Vrs. the State of Bihar & Anr. (C.W.J.C. No. 749 of 2016 & analogous cases)**, disposed off on 19.07.2016, in paragraph 14, observed as follows :

“14 : We are constrained to observe that some of the provisions, to which the respondents referred to in their counter affidavits, vest power in the authority to impose fine, if, in case, the license fees is not deposited within time or the Minimum guarantee quota is not lifted. Nonetheless, the Department is not without any remedy. Under the Excise Law, there is adequate provision to deal with situations, in case, where there is a failure to deposit the license fee in time, or there is a lapse on the part of the licensee to lift the Minimum guarantee quota. Further more, Clause 14 and 19 of the sale notification stipulates actions that can be taken against the defaulter licensee.....”

32. In the case of **National Trading Corporation Vrs. State of Bihar**, reported in **1991 (2) P.L.J.R. 622**, a Bench of this Court observed that exaction of money or levying of

charge without due authority is impermissible under the law.

Paragraph 8 of the judgment is quoted hereinbelow :

“After having carefully examined the statutory provisions brought to my notice I am of the considered opinion that none of the provisions either of the Act or the Rules empower the excise authorities to levy and collect any amount by way of establishment charges under consideration. The legislature and its delegates i.e. the State Government and the Board of Revenue wherever intended to levy such charges, have made specific provisions in this regard. I am unable to accept the contention of the learned Advocate General that since in case of some of the functionaries provisions have been made for levy of presumption is wholly unwarranted. Any compulsory exaction of money by the State through its officers partake the colour of tax under the constitutional law. Under Article 265 of the Constitution no tax can be levied and collected except under the authority of law. The law here means the Act of Legislature and the subordinate legislations made thereunder. No tax, which includes the nature of demands under challenge, can be imposed under executive fiat without any legislative sanction. This aspect of the constitutional law has been well explained

and firmly laid down by the Supreme Court in the case of a Ventaka Subbarao & Ors. Vrs. The State of Andhra Pradesh, reported in AIR 1965 S.C., 1773.”

33. Coupled with the above, as per Section 2(9) of the Bihar Excise Act, 1915, the excise-revenue means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a criminal court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs. As already noticed earlier, there is no provision under the Act or the Rule, which provides for the levy of *movement fee* on the lifted quota of liquor not lifted by a licensee as against his *minimum guarantee quota*.

34. Thus, in our considered view, the impugned demand, raised by the Excise Superintendent, for payment of *movement fee* against unlifted quota of annual *minimum guarantee quota* of the petitioners, is without any authority of law and wholly without jurisdiction and the impugned demands are, accordingly, set aside.

35. The respondents are directed to refund the security deposit as non-payment of *movement fees* was the only ground for withholding the same, which we have held to be

lacking legislative sanction.

36. With the above observations and directions,
these writ applications are allowed.

(Samarendra Pratap Singh, J)

I.A. Ansari, CJ : I agree.

(I.A. Ansari, CJ)

SA/Pawan

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