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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 92 OF 2023

1. DELTA CORP. LIMITED,
A company, incorporated under
the provisions of the Companies Act,
1956 and having its registered office
at 10, Kumar Place 2408,
General Thimayya Road, Pune-411 001,
through its authorized representative,
Shri Premanand Gawas,
Aged 39 years, Indian National,
having his Office address at Delta Pleasure
Cruise Company Ltd., Fisheries Department
Building, Ground Floor, D. B. Road,
Panaji, Goa 403 001.

2. SHRI PREMANAND GAWAS
Shareholder of Petitioner No.1
Aged 39 years, Indian National,
having his office at Fisheries
Department building, ground floor,
D. B. Road, Panaji Goa – 403 001.

... Petitioners

Versus

1. STATE OF GOA, through
the Secretary, Department of Home,
Porvorim Goa.

2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL) Government of Goa,
Secretariat, Porvorim Goa.

... Respondents

**WITH
WRIT PETITION NO. 50 OF 2023**

**1. DELTA PLEASURE CRUISE
COMPANY PVT. L.T.D.**

A Company, incorporated
under the provisions of the
Companies Act, 1956 and having
its registered office at Delta Centre,
H.No.850, Off NH-17,
Porvorim Goa, through its
authorized representative,
Shri Manoj Jain, Aged 41 years,
Indian National, having his
office address at Delta Pleasure
Cruise Company Ltd.,
Fisheries Department Building,
Ground Floor, D. B. Road,
Panaji, Goa 403 001.

2. SHRI MANOJ JAIN, aged 41 years,
Indian citizen, having his office
address at Fisheries Jetty,
Fisheries Department Building,
D. B. Road, Panaji, Goa.
Shareholder 403001, a director of
Petitioner No.1.

... Petitioners

Versus

1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim Goa.

2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL), Government of Goa,
Secretariat, Porvorim Goa.

... Respondents

**WITH
WRIT PETITION NO. 40 OF 2023**

**1. HIGH STREET CRUISES AND
ENTERTAINMENT PVT. L.T.D.**

A Company, incorporated
under the provisions of the Companies
Act, 1956 and having its registered office
at Bayside Mall, 2nd Floor, Opp. Sobo
Central Mall, Tardeo Road, Haji Ali,
Mumbai 400 034, through its authorized
representative, Shri Shailendra Singh,
Aged 44 years, Indian National,
having his office address at Delta
Pleasure Cruise Company Ltd., Fisheries
Department Building, Ground Floor,
D. B. Road, Panaji, Goa 403 001

2. SHRI SAIENDRA SINGH,
Aged 44 years, Indian National,
having his office address at Delta Pleasure
Cruise Company Ltd.,
Fisheries Department Building,
Ground Floor, D. B. Road,
Panaji Goa 403 001.

Versus

**1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim Goa.**

**2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL), Government of Goa,
Secretariat, Porvorim Goa.**

... Respondents

Mr Darius Khambata, Senior Advocate, Mr H. Narsappa, Senior
Advocate with Mr Parag Rao, Mr Vivek Shetty, Ms Sherna

Doongaji, Ms Aditi Bhansali, Mr Akhil Parrikar and Ms Saumya Drago, Advocates *for the Petitioners* .

Mr D. Pangam, Advocate General with Mr S. Priolkar, Additional Government Advocate in W.P. No.92/2023 with Mr S. P. Munj, Additional Government Advocate in W.P. No.50/2023, with Mr S. Parab, Additional Government Advocate in W.P. No.40/2023 *for the Respondents*.

**WITH
WRIT PETITION NO.161 OF 2023
WITH
MISC. CIVIL APPLICATION NO.202 OF 2023 (F)
IN
WRIT PETITION NO.161 OF 2023
WITH
MISC. CIVIL APPLICATION NO.497 OF 2023 (F)
IN
WRIT PETITION NO.161 OF 2023**

VM SALGAOCAR CORPORATION
PRIVATE LIMITED THR. AUTH. R.E.P.
ANTHONY E BARRETO AND ANR. ... Petitioners

Versus

STATE OF GOA THR. THE
SECRETARY AND ANR ... Respondents

Mr Darius Khambata, Senior Advocate, Mr H. Narsappa, Senior Advocate with Mr Parag Rao, Ms Janki Garde, Mr Akhil Parrikar and Ms Saumya Drago, Advocates *for the Petitioners* .

Mr D. Pangam, Advocate General with Mr Geetesh Shetye, Additional Government Advocate in W.P. No.161/2023 *for the Respondents*.

**WITH
WRIT PETITION NO. 41 OF 2023 (F)**

1. SILVER SPRINGS PLEASURE
RESORT PVT. LTD., A company,

incorporated under the provisions of the Companies Act, 1956 and having its registered office at Varca Beach, Varca, Salcete Goa 403 721 through its authorized representative, Shri Lloyd George Jathanna, Aged 45 years, married, Indian National, resident of Flat # 102, Saileela Apartment, Sai Colony, Belthur Village, Kadugodi, Bangalore - 560067, Karnataka.

2. SHRI LLOYD GEORGE JATHANNA, Aged 45 years, Indian National, residing at Flat # 102, Saileela Apartment, Sai Colony, Belthur Village, Kadugodi, Bangalore - 560067, Karnataka Associate Vice-President Operations Finance of Petitioner No.1.

... Petitioners

Versus

1. STATE OF GOA, through the Secretary, Department of Home, Porvorim, Goa.

2. UNDER SECRETARY, DEPARTMENT OF HOME (GENERAL), Government of Goa, Secretariat, Porvorim Goa.

... Respondents

Mr Parag Rao and Mr Rohan Rajadhyaksha with Mr Percis Anklesaria, Mr Anupam Sambhus, Ms Arunima Kumari, Mr Akhil Parrikar and Ms Saumya Drago, Advocates *for the Petitioners.*

**WITH
WRIT PETITION NO. 32 OF 2023**

**1. GOA COASTAL RESORTS AND
RECRATION PRIVATE LIMITED**

A company, incorporated under the provisions of the Companies Act, 1956 and having its registered office at Hotel Neo Majestic, Plot No.104/1A, Opp. Azad Bhavan, Porvorim, Bardez, Goa - 403521, through its authorized representative, Shri. Raghuvir Shirodkar, Aged 32 years, Indian National, having his Office at Hotel Neo Majestic, Plot No.104/1A, Opp. Azad Bhavan Porvorim, Bardez, Goa – 403521.

2. SHRI. MUKESH GULATI
aged 61 Years, Indian National,
residing at D8, Ocean Park,
Dona Paula, Tiswadi, Goa 403004
shareholder of Petitioner No.1.

... Petitioners

Versus

1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim, Goa.

2. UNDER SECRETARY, DEPARTMENT
OF HOME (GENERAL), Government of Goa,
Secretariat, Porvorim, Goa.

... Respondents

**WITH
WRIT PETITION NO. 2690 OF 2022 (F)**

1. GOAN HOTELS AND REALTY
PRIVATE LIMITED, A company
incorporated under the provisions
of the Companies Act, 1956
and having its registered office
at DB Central, Maulana Azad Road
Rangwala Compound, Jacob Circle

Mumbai 40001, India , through its
authorized representative -
Shri. Deepak Semor,
Aged 54 years, Indian National,
resident of Flat No. 514,
Gera Astoria, Caranzalem,
Tiswadi Goa.

2. SHRI. HIFZURREHMAN
KADIWAL ABDULLAH,
Aged 60 years, Indian National,
Having his office at D.B. Central,
Maulana Azad Road, Rangwala
Compound, Jacob Circle,
Mumbai 40001, India.

... Petitioners

Versus

1. STATE OF GOA, through the Secretary,
Department of Home, Porvorim, Goa.

2. UNDER SECRETARY,
Department of Home (General),
Government of Goa, Secretariat,
Porvorim, Goa.

... Respondents

**WITH
WRIT PETITION NO. 51 OF 2023**

1. GOLDEN PEACE HOTELS AND
RESORTS PRIVATE LIMITED

A company, incorporated under
the provisions of the Companies Act, 1956
and having its registered office
at Hotel Neo Majestic, Plot No.104/
1A, Opp. Azad Bhavan, Porvorim,
Bardez, Goa - 403521, through its
authorized representative,
Shri. Rigveda D. Amonkar,

Aged 31 years, Indian National,
having his Office at Hotel Neo Majestic,
Plot No.104/1A, Opp. Azad Bhavan
Porvorim, Bardez, Goa – 403521.

2. SHRI. MUKESH GULATI
aged 61 Years, Indian National,
residing at D8, Ocean Park,
Dona Paula, Tiswadi, Goa 403004
shareholder of Petitioner No.1.

... Petitioners

Versus

1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim, Goa.

2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL), Government of Goa,
Secretariat, Porvorim, Goa.

... Respondents

**WITH
WRIT PETITION NO. 19 OF 2023**

1. GOLDEN PEACE INFRASTRUCTURE
PRIVATE LIMITED

A company, incorporated under
the provisions of the Companies Act, 1956
and having its registered office
at Hotel Neo Majestic, Plot No.104/
1A, Opp. Azad Bhavan, Porvorim,
Bardez, Goa - 403521, through its
authorized representative,
Shri. Rigveda D. Amonkar,
Aged 31 years, Indian National,
having his Office at Hotel Neo Majestic,
Plot No.104/1A, Opp. Azad Bhavan
Porvorim, Bardez, Goa – 403521.

2. SHRI. MUKESH GULATI
aged 61 Years, Indian National,
residing at D8, Ocean Park,
Dona Paula, Tiswadi, Goa 403004
shareholder of Petitioner No.1.

... Petitioners

Versus

1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim, Goa.

2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL), Government of Goa
Secretariat, Porvorim Goa.

... Respondents

WITH
WRIT PETITION NO. 2675 OF 2022 (F)

1. M/s GOLDFINCH RESORTS
PVT LTD, A company, incorporated
under the provisions of the Companies
Act, 1956 and having its registered office,
Sy No. 34/1-B, Chimbhel, Tiswadi,
Goa 403402 through its authorized
representative, Shiv Bose, Aged 42 years,

2. SHRI. SHIV BOSE, Aged about 42 years,
Indian citizen, having his office address
Double Tree by Hilton, Goa - Panaji
Kadamba Plateau, Panjim Old Goa
Bypass Road Panaji - 403006 Goa.

... Petitioners

Versus

1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim, Goa.

2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL), Government of Goa
Secretariat, Porvorim Goa.

... Respondents

WITH
WRIT PETITION NO. 31 OF 2023

1. GOLDEN GLOBE HOTELS
PRIVATE LIMITED, A company
incorporated under the provisions of
the Companies Act, 1956 and
having its registered office
at Flat No. 4, R.R. Apartment,
3-4, Manglapur, Mehrauli,
New Delhi 110030, through its
authorized representative,
Shri. Amit Garg, Aged 33 years,
Indian National, having his Office
at First Floor, Kamla House,
D.B. Marg, Panaji, Goa-403001

2. SHRI. LAKHRAM GOYAL,
aged 29 Years, Indian national,
residing at 436/16, Civil Line,
Gurugram, Haryana-122001
shareholder of Petitioner No. 1.

... Petitioners

Versus

1. STATE OF GOA, through the
Secretary, Department of Home,
Porvorim, Goa.

2. UNDER SECRETARY,
DEPARTMENT OF HOME
(GENERAL), Government of Goa
Secretariat, Porvorim Goa.

... Respondents

Mr Parag Rao, Mr Akhil Parrikar and Ms Saumya Drago, Advocates *for the Petitioners*.

Mr D. Pangam, Advocate General with Mr S. Priolkar, Additional Government Advocate in W.P. No.31/2023, with Ms S. Kamat, Additional Government Advocate in W.P. No.19/2023, with Ms Maria Correia, Additional Government Advocate in W.P. No.51/2023, with Mr Tukaram Gawas, Additional Government Advocate in W.P. No.2675/2022 (F), with Mr Prashil Arolkar, Additional Government Advocate in W.P. No.32/2023, and with Ms Sapna Mordekar, Additional Government Advocate in W.P. No.2690/2022 (F) *for the Respondents*.

**CORAM: M. S. SONAK &
 VALMIKI SA MENEZES, JJ.**

**Reserved on: 30th MARCH 2023
Pronounced on: 6th APRIL 2023**

JUDGMENT: (Per M. S. Sonak, J.)

1. Heard the learned counsel for the parties.
2. Since substantially common issues of law and facts arise in all these petitions, the learned counsel for the parties agree that common judgment and order could dispose of the same. Accordingly, with consent, we treat Writ Petition No.92 of 2023 as the lead petition.
3. Under the provisions of the Goa Public Gambling Act, 1976 (the said Act), the Petitioners have been issued licenses to

operate offshore and onshore casinos in the State of Goa. These licenses are subject to several terms and conditions, including the payment of Annual Recurring Fees (A.R.F.) prescribed in the statutory notification issued under the said Act.

4. To combat Covid'19 Pandemic and for public safety and health concerns, lockdown orders were issued by the National and State Governments. For periods between 01.04.2020 and 31.10.2020 and 01.05.2021 and 30.09.2021 (closure periods), most of the business operations, including the Petitioners' casino operations, were ordered to be closed. By way of concession, the State Government deferred the issue of payments during periods affected by partial or even complete closure of casino operations by not insisting upon immediate payments.

5. However, upon considering the Petitioners' representations, the State, by its impugned order dated 25.11.2022 (published in the Official Gazette dated 01.12.2022), directed the Petitioners to pay the arrears of A.R.F. for the closure periods along with penal interest at the rate of 12% per annum. The State's affidavit shows that this amount comes to ₹321,66,66,668/- (Rupees Three Hundred Twenty-One Crores Sixty-Six Lakhs Sixty Six Thousands Six Hundred and Sixty-Eight Only). The Petitioners, on various grounds, contend that the State should not be

permitted to insist upon recovery of arrears towards A.R.F. Hence, the present petitions.

6. PETITIONERS' CONTENTIONS

6.1 Petitioners contend that the casino operations which the Petitioners undertake are "authorized games" under Section 13A of the said Act. Therefore, after paying necessary and prescribed license fees, they submit that the Petitioners have been issued licenses under the said Act.

6.2 Petitioners contend that their legal relationship with the State qua such casino operations in pursuance of such licenses is "purely contractual". Therefore provisions and principles of contract law would govern their relationship. Moreover, since Government is a contracting party, the principle of non-arbitrariness and fairness, as guaranteed by Article 14 of the Constitution, would also apply.

6.3 The Petitioners contend that the Government, after ordering the closure of casino operations during the above closure periods, cannot arbitrarily, unreasonably and unfairly insist that the Petitioners (licensees) should pay A.R.F. with penal interest at the rate of 12% per annum for the closure periods. They submit

that such insistence on the part of the State is arbitrary and infringes the guarantee of non-arbitrariness enshrined in Article 14 of the Constitution of India. They point out that even during the partial closure periods, the Petitioners, without demur, have fairly paid the A.R.F. Still, the absence of reciprocal fairness by the State Government violates Article 14 of the Constitution of India.

6.4 The Petitioners have pointed out how the State Government has granted exemptions or concessions to specific sectors like transportation. Therefore, they submit that by insisting the Petitioners pay the A.R.F. during closure periods, there is hostile discrimination against them, thereby infringing Article 14 of the Constitution.

6.5 The Petitioners submitted that the State must act fairly, reasonably and not arbitrarily, even in purely contractual matters. They rely on *Ramana Dayaram Shetty Vs International Airport Authority of India and others*¹, *Kumari Shrilekha Vidyarthi and others Vs State of U. P. and others*², *Jamshed Hormusji Wadia Vs Board of Trustees, Port of Mumbai and another*³, *Bharat Petroleum Corporation Ltd., Vs Maddula Ratnavalli and others*⁴, and *M. P. Power Management Company Ltd., Vs Sky Power*

¹ (1973) 3 SCC 489

² (1991) 1 SCC 212

³ (2004) 3 SCC 214

⁴ (2007) 6 SCC 81

*Southeast Solar India Private Limited and others*⁵ in support of these contentions.

6.6 The Petitioners also invoked the Doctrine of legitimate expectation. They submit that the Government, by deferring the payments scheduled during the partial and complete closure periods, held out that there might be no insistence of A.R.F., at least during the entire closure period. However, without assigning any reason, the impugned order dated 25.11.2022 dashes all such legitimate expectations by insisting upon the payment of A.R.F. arrears and that too with a 12% per annum penal rate. Mr H. Narsappa articulately described the impugned order as "the unkindest cut of all." He relied on *Food Corporation of India Vs M/s. Kamdhenu Cattle Feed Industries*⁶, *State of Jharkhand and others Vs Brahmputra Metallica Ltd., and Another*⁷ and *Parisons Agrotech Private Limited Vs Union of India and others*⁸ to expound the Doctrine of legitimate expectations.

6.7 The learned counsel for the Petitioners also relied upon *Zee Telefilms Ltd., and Another Vs Union of India and others*⁹, *Pitabash Chhotaray Vs Orissa State Financial Corporation and*

⁵ (2023) 2 SCC 703

⁶ (1993) 1 SCC 71

⁷ 2020 SCC Online SC 968

⁸ (2015) 9 SCC 657

⁹ (2005) 4 SCC 649

*Another*¹⁰, *Lloyd Electric and Engineering Limited Vs State of Himachal Pradesh and others*¹¹, *Bharati Airtel Limited Vs Union of India*¹² and *Union of India and another Vs Association of Unified Telecom Service Providers of India and others*¹³ to submit that even the contracts having some statutory underpinning would nevertheless constitute "contracts" and would be governed by the provisions of the Contract Act etc. Some decisions were also relied upon to support the contentions that while Article 19(1)(g) may not apply to gambling, Article 14 of the Constitution would apply. The learned counsel submitted that once the contracts were entered into permitting the casino operations, the State could never refuse to be bound by the mandate of Article 14 of the Constitution of India.

6.8 The Petitioners contend that the Covid'19 Pandemic was a Force Majeure event. Therefore, the Government, even under the Contract law, cannot insist upon the recovery of A.R.F during the closure period. The learned counsel for the Petitioners relied on *R. Narayanan Vs The Government of Tamil Nadu and others*¹⁴ and *Geeta Jeena Vs Government of N.C.T. of Delhi and others*¹⁵

10 1987 SCC Online Ori 46

11 (2016) 1 SCC 560

12 (2015) 12 SCC 1

13 (2011) 10 SCC 543

14 W.P.(MD) No.19596 of 2020 and W.M.P. (MD) Nos. 16318 & 16320 of 2020 (Madurai Bench of Madras High Court)

15 (2021) SCC Online Del 4871

to show how Madras and Delhi High Courts have addressed the issues of the impact of the Covid'19 Pandemic on contracts entered into by and on behalf of the State or instrumentality of the State.

6.9 Mr Rao and Mr Rajadhyaksha, learned counsel for some of the Petitioners, submitted that A.R.F. was nothing but a fee for services purportedly rendered or to be rendered by the Government. They submitted that hardly one or two officers could regulate the Petitioners' casino operations. They submitted that during the closure period, there was no regulation. Therefore, at least during the closure period, there was no correlation between the fees insisted and the services rendered (quid pro quo), even in the broadest sense. They relied on *Vam Organic Chemicals Ltd. & Anr vs. State of U.P. & Ors.*¹⁶, *Yog Advertising & Marketing Services & Anr. vs. Municipal Corporation of Greater Mumbai & Anr.*¹⁷, *State of U.P. & Ors. vs. Vam Organic Chemicals Ltd. & Ors.*¹⁸, *A.P. Paper Mills Ltd. vs. Govt. of A.P. & Anr.*¹⁹, *B.S.E. Brokers' Forum, Bombay & Ors. vs. Securities and Exchange Board of India & Ors.*²⁰ and *Secunderabad Hyderabad Hotel Owners'*

16 (1997) 2 SCC 715

17 2016 SCC Online Bom 62

18 (2004) 1 SCC 225

19 (2000) 8 SCC 167

20 (2001) 3 SCC 482

*Association & Ors. vs. Hyderabad Municipal Corporation Hyderabad & Anr.*²¹ in support of this contention.

6.10 Mr Narsappa learned Senior Advocate for the petitioners in Writ Petition No.161 of 2023 submitted that the petitioners had already applied to reduce the gaming area from 297.50 sq. mtrs. to 99.88 sq. mtrs. By its communication dated 16.04.2021, he presents that the State informed the petitioner that this request to reduce the gaming area had been accepted. Accordingly, A.R.F. for the period from 01.11.2020 to 31.01.2021 was waived.

6.11 Mr Narsappa submits that the request to reduce the gaming area was made on 21.05.2020. Accordingly, the A.R.F. for the period from 21.05.2020 to 31.01.2021 ought to have been waived. On this basis, Mr Narsappa urged that the petitioner in Writ Petition No.161/2023 be granted relief in terms of prayer clause (H.H.) by issuing challans from April 2020 or 21.05.2020 on the reduced gaming area of 99.88 sq. mtrs.

6.12 Mr Narsappa submitted that the Petitioners claimed relief based upon a combination of contractual breaches by the Government, the force majeure event, legitimate expectation, and

²¹ (1999) 2 SCC 274

mostly the Government's arbitrary and unreasonable action infringing Article 14 of the Constitution.

6.13 However, the learned Counsel for the Petitioners clarified that the Petitioners were neither relying upon the contractual Doctrine of frustration nor claiming any exemptions or waivers.

6.14 For all the above reasons, the Petitioners urge that the impugned order dated 25.11.2022, by which the State insists that the Petitioners pay A.R.F. during the closure period, be quashed and set aside.

7. GOVERNMENT'S DEFENCE

7.1 Learned Advocate General for the State of Goa pointed out that casino operations are *res extra commercium*; therefore, the casino business is not entitled to the protection of Article 19(1)(g) and only limited protection of Article 14 of the Constitution.

7.2 Learned Advocate General submitted that even the Goa Public Gambling Act, 1976, was enacted to provide the punishment for public gambling and keeping of common gaming houses in the State of Goa. He submits, however, that under Section 13A of the said Act, an exception was made by authorizing any game of electronic amusement/ slot machines in

Five Star hotels and offshore vessels as may be notified. He submitted that this privilege could be granted to the licensees subject to such conditions, including payment of recurring and non-recurring fees as prescribed.

7.3 Learned Advocate General submitted that there was no contract between the State and the petitioners for casino operations. Instead, this was a case of grant of privilege subject to terms and conditions, including payment of recurring and non-recurring fees, as may be prescribed. He submitted that the terms and conditions subject to which such privilege was granted to the petitioners are mainly contained in notification dated 09.11.1995 and the subsequent notifications amending this notification. He pointed out that under these notifications, a license to operate casinos is issued for five years, for which an initial fee is prescribed. In addition, the licensees are duty-bound to pay annual recurring fees at the prescribed rates in advance on or before March 31 of every year by depositing the same in Government Treasury.

7.4 Learned Advocate General submitted that no notification clauses permitted any waiver or exemption from payment of A.R.F. Furthermore, he pointed out that there was no clause in any of the notifications based on which the licensees could be

relieved of the obligation to pay A.R.F. Accordingly, he submits that for the year 2020, the petitioners were duty-bound to pay A.R.F. on or before 31.03.2020 and 31.03.2021.

7.5 Learned Advocate General submitted that by defaulting on such payments, the petitioners could not insist on any exemption of A.R.F. for the closure periods between 01.04.2020 and 31.10.2020 and 01.05.2021 and 30.09.2021. He submitted that the defaults were even before the two closure periods, and therefore, the Petitioners must not be allowed any leeway based upon the subsequent lockdown orders.

7.6 Learned Advocate General submitted that even if it is assumed that the licenses issued to the petitioners had created a contractual relationship between the Government and the petitioner-licensees, this was a case of a completed contract to which the Doctrine of frustration would never apply. He submitted that this was not a case of a contract or, in any case, an executory contract.

7.7 Learned Advocate General offered that there was nothing in the terms and conditions of the license based on which any waivers or exemptions could be claimed due to *Force Majeure*. He pointed out that such a concept was neither recognized

expressly nor impliedly in the terms and conditions subject to which the petitioners' privilege or license was granted.

7.8 Learned Advocate General submitted that since the petitioners had no fundamental right to undertake casino business, even the rights under Article 14 of the Constitution of India cannot be applied with full vigour qua the petitioners. In any case, he submitted that there was nothing arbitrary, unreasonable or unfair in the State's action.

7.9 Learned Advocate General pointed out that several concessions were extended to the petitioners, and because some additional benefits may have been extended in other sectors, there was no ground to allege discrimination. He submitted that whether to extend concessions or the adequacy of the concessions is within the realm of executive and fiscal policy. Therefore, he proposed that a judicial review in such areas must be limited.

7.10 Learned Advocate General submitted that the petitioners' license continued uninterrupted even during the so-called closure periods. He offered that the distinction between tax and fee is now almost obliterated.

7.11 Learned Advocate General submitted that the State's regulation did not cease even during the so-called closure periods. He offered that regulation was necessary to ensure obedience to several directives issued under the Disaster Management Act or other legislations. He submitted that fairness in such matters is not a one-way street, and there are no pleadings about the petitioners being in a position to undertake casino operations at the height of the covid Pandemic.

7.12 Finally, learned Advocate General submitted that there was nothing unreasonable in the A.R.F. rates and no direct challenge to such rates in any of the petitions.

7.13 Learned Advocate General relied on *Shukr Sudin Sinai Usgaonkar vs State of Goa*²², *Amar Chandra Chakraborti vs Collector of Excise, Government of Tripura & Ors.*²³, *State of Bihar and Ors. vs. Nirmal Kumar Gupta*²⁴, *Assistant Excise Commissioner & Ors. vs. Issac Peter & Ors.*²⁵, *Mary vs. State of Kerala & Ors.*²⁶, *Ramanand & Ors. vs. Dr. Girish Soni & Anr.*²⁷, *Raja Dhruv Dev Chand vs. Raja Harmohinder Singh*

²² WP NO.72/2021 (High Court of Bombay at Goa)

²³ (1972) 2 SCC 442

²⁴ (2013) 2 SCC 565

²⁵ (1994) 4 SCC 104

²⁶ (2014) 14 SCC 272

²⁷ 2020 SCC OnLine Del 635

& Anr.²⁸, M/s. Koushik Group vs The State of Telangana & Ors.²⁹, Small Scale Industrial Manufacturers Association (Regd.) vs. Union of India & Ors.³⁰, Indian School, Jodhpur & Anr. Vs State of Rajasthan & Ors.³¹, K. Ramanathan vs State of Tamil Nadu & Anr.³² and Jalkal; Vibhag Nigam & Ors. vs Pradeshiya Industrial and Investment Corporation & Anr.³³ in support of his contentions.

7.14 Based upon the above contentions, the Learned Advocate General submitted that these petitions should be dismissed, and the petitioners must be directed to pay the A.R.F.

8. Learned Advocate General, however, submitted that, as an additional concession, the State Government would not insist upon the 12% penal interest levy on A.R.F. during the closure period. Therefore, he proposed that this demand of 12% penal interest in the impugned order dated 25.11.2022 may be considered dropped, provided the petitioners pay the A.R.F. dues at the earliest.

28 (1968) 3 SCR 339

29 WP No.27097/2021 – High Court of the State of Telangana at Hyderabad

30 (2021) 8 SCC 511

31 (2021) 10 SCC 517

32 (1985) 2 SCC 116

33 2021 SCC OnLine SC 960

9. CONSIDERATION OF THE RIVAL CONTENTIONS

The Goa Public Gambling Act, 1976 (said Act) and the Notifications issued thereunder. (Statutory provisions)

9.1 The said Act was enacted to provide punishment for public gambling and keeping common gaming houses in the State of Goa. Sections 3 and 4 of the said Act ban and provide punishment for keeping common gaming houses and gaming in such common gaming houses.

9.2 Section 13A of the said Act, however, reads as follows:-

“13A. Authorized Game.— (1) Notwithstanding anything contained in this Act, the Government may authorized any game of electronic amusement/slot machines in Five Star Hotels {and such table games and gaming on board in vessels offshore as may be notified} subject to such conditions, including payment of such recurring and non-recurring fees, as may be prescribed.

(2) The provisions of this Act shall not apply to any game authorized under sub-section (1).”

9.3 Thus, notwithstanding the prohibition to keep a common gaming house or for gaming in common gaming houses, under Section 13A of the said Act, the Government is empowered to authorize any game of electronic amusement/slot machines in

Five Star hotels and offshore vessels as may be notified subject to such conditions, including payment of such recurring and non-recurring fees a may be prescribed. Sub-section (2) of Section 13A provides that the provisions of the said Act shall not apply to any game authorized under sub-section (1).

9.4 The terms and conditions, including payment of such recurring and non-recurring fees, were first notified and prescribed in a notification dated 09.11.1995 (principal notification). This notification was amended from time to time, prescribing *inter alia* for higher rates of recurring and non-recurring fees and prescribing the mode and manner of determining and paying such fees.

9.5 Petitioner No.1 in Writ Petition No.92/2023 (the lead petition) has a valid licence to conduct onshore and offshore casino operations. Accordingly, such licences are issued under the said Act and must comply, *inter alia*, with the conditions in the notifications issued thereunder.

9.6 The petitioners have pleaded that the latest and the relevant amendment to the principal notification dated 09.11.1995 is contained in the notification dated 27.02.2018. In terms of these notifications, a licensee must pay a non-recurring license fee of

Rupees Fifty Lakhs in respect of an onshore casino and Rupees One Crore for an offshore casino license. Further, a licensee must pay an annual recurring fee (A.R.F.) depending upon the land-based casino's casino area in a Five Star Hotel and the total passenger capacity in an offshore vessel.

9.7 The principal notification and the notification dated 27.03.2018 provided that a uniform period from April 1 to March 31 shall be maintained to pay A.R.F. Furthermore, the principal notification prescribes that the A.R.F. was payable "*in advance*" on or before March 31 every year, which amount shall be deposited into the Government Treasury by means of challan under the head of an account as specified by the authority and shall furnish a copy of the challan to the Home Depart of the Government.

9.8 Thus, the scheme of the provisions in Section 13A of the said Act read with the notifications issued thereunder from time to time that the licensees must pay a one-time non-recurring fee at the time of a five-year license issue. Further, such licensees must pay in advance on or before March 31 of every year, A.R.F., as prescribed. Therefore, subject to the rights of the Government to modify the rates, the license fees comprising of two components of the non-recurring (one time) and the annual

recurring fees (for five years, but payable in advance on or before March 31 of every year) was pretty certain and determined. The licensees were made aware that these would be the fees payable for the license to operate their casinos, whether onshore or offshore. There was no ambiguity on this count. Therefore it would not be correct to equate the recurring fees with licence fees or rentals where a licensor or lessor grants premises to a licensee or lessee.

COMPLIANCES AND COVID-19 PANDEMIC.

10. Accordingly, in all these cases, there is no dispute about the payment of the non-recurring (one-time) license fees for the issue of licenses to the petitioners. Presumably, all the petitioners, who claim to have valid licenses, have paid this amount at the stage of issue of licenses to them.

11. Therefore, for the periods 01.04.2020 to 31.03.2021 and 01.04.2021 to 31.03.2022 (closure periods), the petitioners were bound to pay A.R.F. on or before 31.03.2020 and 31.03.2021. This is clear from the licenses issued to the petitioners and the two notifications containing the terms and conditions subject to which such licenses were given to the petitioners.

12. The petitioners failed to pay A.R.F. on or before 31.03.2020 and 31.03.2021. This implies that the Petitioners defaulted even before the two closure periods. The petitioners' case is that the Covid'19 Pandemic was raging, and therefore, the petitioners had represented to the Government to relieve them from the obligation to pay A.R.F. It is further the petitioners' case that the Government was considering these representations. Therefore, even the Government did not adopt any coercive measures like cancellation of the license or closure of the casino operations, even though the A.R.F. was not paid despite repeated demands from the Government.

13. The petitioners and the respondents are *ad idem* about Covid'19 Pandemic conditions during the above period. The National and State authorities, by invoking the provisions of the Disaster Management Act, 2005 (D.M.A.), the Epidemic Diseases Act, 1897, the Code of Criminal Procedure and even some provisions of the Indian Penal Code, 1860, were constrained to issue notifications and orders to combat the Pandemic requiring the citizens and non-citizens alike to take adequate measures to contain its spread and impact. These measures included the imposition of total or partial lockdowns, quarantine protocols, travel restrictions, restrictions on entry and

exit into the States, etc. As a result, this event was declared a "*National Disaster*".

14. The petitioners have referred to the directives issued by at least three different and distinct authorities: (i) The National Government and National Authorities like the National Disaster Management Authority (NDMA) etc.; (ii) The State Government and State Authorities like the Health Department etc.; (iii) Statutory Independent Authorities like Executive Magistrates directing all gymnasiums, cinema theatres, public swimming pools, casinos, spa and massage parlours, night clubs and multiplexes, etc., to shut down their operations for specified periods to combat and contain the spread of the Pandemic.

15. These orders and directives were issued *inter alia* under the Disaster Management Act, 2005 (D.M.A.), Epidemic Diseases Act, 1987, Cr. P.C., and other National or State Legislations. Some of the orders and directives may trace their source to the executive powers of the National and State Governments. Significantly, no such lockdown or closure orders are challenged by any Petitioners. Instead, the Petitioners rely upon them to contend that the State Government must not recover the A.R.F. proportionate to the closure periods on the grounds of fairness and *force majeure*.

16. The Petitioners have pleaded that they have paid the A.R.F. during the partial closure periods without demur. However, the petitioners contend that during the two closure periods when, in pursuance to the above-referred orders, the petitioners' casino operations were stopped entirely, the petitioners must be relieved from the payment of A.R.F.

**THE STATUS OF LEGAL RELATIONS BETWEEN THE
CASINO LICENSEES AND THE GOVERNMENT**

**THE CHARACTER OF THE FEES LEVIED UNDER THE
SAID ACT AND NOTIFICATIONS.**

17. For proper evaluation of the Petitioners' contentions, it is first essential to determine the legal relationship between the Government and the Petitioners under which they are permitted to operate casinos in the State of Goa. Related to this issue is the character of the "license fees" that the petitioners must pay under the licenses issued under the said Act and the notifications issued thereunder.

18. The legal status of the Government by itself or through private players engaging in liquor or gambling activity is reasonably well settled by several Constitution Bench decisions of the Hon'ble Supreme Court. It is accepted that no person or citizen has any fundamental right to engage in such activities because they are *extra commercium*. Such activities attended by

danger to the community can be entirely prohibited by the Government or permitted under such conditions as would limit, to the utmost, its evils. The Government can determine the manner, mode and extent of regulation at its discretion. These are legislative and executive will and policy matters, where judicial review would be minimal.

19. The Courts have held that given the pernicious nature of such activities, and their impact on health, morality and general well-being, they are treated as *extra commercium*, requiring legislative and executive control. Therefore, neither can such activities be regarded as legitimate subjects of trade, occupation or business under Article 19(1)(g) of the Constitution, nor can these activities be treated on the same basis as other legitimate trades while considering Article 14 of the Constitution. (See *Hari Shanker & Ors. vs. Deputy Excise Taxation Commissioner & Ors.*³⁴, *Coowarji B Bhavasha vs Excise Commissioner*³⁵, *Amar Chandra Chakraborty vs Collector of Excise, Government of Tripura*³⁶).

20. The circumstance that the said Act styles the petitioners' activity as "authorized game" or that the Government has licensed

³⁴ (1975) 1 SCC 737

³⁵ AIR 1954 SC 220

³⁶ (1972) 2 SCC 442

the petitioners to undertake casino operations does not render the activity any less *extra commercium*. Based upon such circumstances, the activity cannot enjoy the protection of Article 19(1)(g). The *extra commercium* character of such activity is also not an irrelevant circumstance to determine the extent of protection that could be extended under Article 14 to the petitioners engaged in such activity.

21. In *B.R. Enterprises v/s. State of UP & Ors.*³⁷ in the precise context of gambling (lottery), the Hon'ble Supreme Court held that merely because a lottery transaction is operated by the State itself will not change its character as *res extra commercium*.

22. The Constitution Bench in *R.M.D. Chamarbaugwala (supra)* holds that activities which encourage the spirit of a reckless propensity for making easy gain by lot or chance lead to the loss of hard-earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by such Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject matter of a fundamental right guaranteed by

³⁷ 1999 (9) SCC 700

intended by such Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject matter of a fundamental right guaranteed by Article 19(1)(g) of the Constitution. The Constitution Bench found it difficult to persuade itself that gambling was ever intended to form any part of this ancient country's trade, commerce, or intercourse to be declared free under Article 301. Finally, the Constitution Bench concluded that gambling activities, from their very nature and essence, are *extra commercium*.

23. The Constitution Bench decisions have further explained that only the State has the exclusive privilege to deal with such *extra commercium* activities involving liquor and gambling. Additionally, without altering the *extra commercium* character of such activities, the State can part with this exclusive privilege to private players subject to terms and conditions, including payment of consideration. The object of such terms and conditions, by and far, must be to limit the evils of these pernicious activities and even to earn substantial revenue which could be employed for welfare activities of the State.

24. In *State of Orissa vs Harinarayan Jaiswal*,³⁸ it was held that the fact that a Government was the seller does not change the

38 (1972) 2 SCC 36

legal position once its exclusive right to deal with the privilege to vent liquor was conceded. If the Government owns those privileges, reliance on Article 19(1)(g) or Article 14 of the Constitution becomes irrelevant. The citizens cannot have any fundamental right to trade or conduct business in the properties or rights belonging to the Government, nor can there be any infringement of Article 14 if the Government tries to get the best available price for its valuable rights.

25. In *Nashirwar vs State of M.P.*,³⁹ it was held that the history of excise law shows that the State has the exclusive right or privilege of manufacturing and selling liquor. Therefore, there was nothing wrong with the State holding a public auction and granting such privilege only to the highest bidder. Merely because of a fee element included in the price, there was no question of challenging this element as arbitrary or unconstitutional.

26. Based on the above decisions, we think that the Government, in the present case, has only parted with its exclusive privilege to the petitioners to deal in gambling activities for "*consideration*". That such consideration is styled as a non-recurring or recurring fee is not determinative of its true character.

39 (1975) 1 SCC 29

27. This legal relationship between the Government and the Petitioners is governed by the provisions of the said Act and the licences issued under the notifications made thereunder. Therefore, it would not be correct to compare this legal relationship with relationships like 'licensor-licensee' regarding some premises, etc.

28. Regarding the scope of such relationships and the true character of the fees charged, the Constitution Bench decision in *Hari Shankar & Ors. (supra)*, is instructive. Therein, it was held that the right to deal with intoxicants or gambling was not some fundamental right vested in any citizen. Under its regulatory powers, the State had the right to prohibit absolutely every form of such activity. In all their manifestations, such rights are vested in the State; indeed, without such vesting, there can be no effective regulation of the various forms of such activities.

29. The Constitution Bench referred to the American Jurisprudence (Vol. 30), stating that engaging in liquor traffic is not inherently unlawful; nevertheless, it is a privilege and not a right, subject to governmental control. The power of control is an incident of the society's right to self-protection, and it rests upon the right of the State to care for the health, morals and welfare of the people.

30. The Constitution Bench was concerned with the terms and conditions of licenses for liquor vends granted to the petitioners through public auctions. The terms and conditions of such licenses, including the variable and fixed fee components payable by the licensees to the Government, were challenged as being arbitrary, unreasonable and having no reasonable correlation with the services rendered by the Government.

31. As in the present case, it was contended that such levy, without any nexus with corresponding Government services, would convert such fees into 'taxes', which the Government was not empowered to exact. The Constitution Bench rejected all such contentions after holding that the bid amount, fixed and variable fees were nothing but the consideration that the petitioners had agreed to pay for the State parting with its exclusive privilege.

32. The Constitution Bench first rejected the plea by holding that the petitioners were successful bidders at the liquor vending auction. The terms and conditions, *inter alia*, regarding the license fees, were quite clear, and the bidders accepted such terms and conditions with open eyes. Therefore, the Court held that those who contract with open eyes must accept the contract's burden and its benefits. After accepting such terms and

conditions and even deriving the benefits from them for some time, the auction purchasers cannot, by writ petitions, question such terms and conditions (including the rates of license fees).

33. The Court pointed out that had the Petitioners' venture succeeded, they would have relied upon those terms and conditions to find a legal claim. The Court held that reciprocal rights and obligations arising from a contract do not depend on their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By this test, no contract could ever have a binding force. These observations squarely apply to the cases under consideration because the petitioners, too, accepted the terms and conditions of the license prescribed by the said Act and the notifications issued thereunder with their open eyes and even derived benefits when the going was good.

34. The Constitution Bench further explained that the fees were only consideration for parting with the exclusive privilege. One of the purposes of the State's regulation was to raise revenue. The license fee, though described as a "fee", was more like a revenue collected by the grant of contracts to carry on trade in liquor. Therefore, such consideration cannot be questioned as

excessive by referring to the Constitutional rights in Articles 14 and 19.

35. The Constitution Bench held that since rights regarding intoxicants belong to the State, it is open to the Government to part with those rights for consideration. If the Government owns those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or conduct business in the properties or rights belonging to the Government, nor can there be any infringement of Article 14 if the Government tries to get the best available price for its valuable rights. The Court held that the power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constituted the essence of the matter. Nor does the label affixed to the price determine the true nature of the charge levied by the Government or its right to impose the same.

36. The Constitution Bench (at para 56), after explaining the difference between "tax", "fee", and "excise duty", held the amounts charged to the licensees through the medium of auctions or the "fixed fee" which it charged to the vendors of foreign liquor having a license in Forms L-3, L-4 and L-5 *need bear no quid pro quo to the services rendered to the licensees. The word*

"fee" is not used in the Act or the Rules in the technical sense of the expression. The expressions "license fee" or "fixed fee" means the price or consideration which the Government charges the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incident of a trading or business transaction.

37. The Constitution Bench cited a passage from American Jurisprudence (Vol. 30, pp.642, 645) based on the decisions in *Gundling v. Chicago*, *Phillips v. Mobile* and *Richard v. Mobile*. It says:

" The familiar principle that the imposition of licence fees on useful and honourable occupations must not exceed the cost of issuing the licence, plus the expense of inspecting and regulating the business licensed is not necessarily applicable to a liquor license. The liquor traffic is not something which is licensed for the purpose of promoting it. Indeed, licence fees may be exacted in amounts intended to discourage participation in the business. The courts have quite generally refused to hold that the licence fee imposed, merely because it is large, is a tax, where the object is to control, regulate, and restrict, and not to encourage the liquor traffic, the revenue being the result of the system and not the motive for its adoption. The higher the fee imposed for a licence, it is sometimes said, the better the regulation, as the effect of a high fee is to keep out the business those who are undesirable, and to keep within reasonable limits the number of those who may engage in it."

38. The Constitution Bench held that no statute forbids the Government from trading in its own rights or privileges. Far from doing so, the Statute under consideration expressly empowers it by Sections 27 and 34 to grant leases of its rights and issue the requisite licenses, permits or passes on payment of such fees as prescribed.

39. The Constitution Bench reiterated that the *"license fee" or "fixed fee" does not have to conform to the requirement that it must bear a reasonable relationship with the services rendered to the licensees. The amount charged to the licensees is not a fee properly so-called nor indeed a tax but is in the nature of the price of a privilege, which the purchaser has to pay in any trading or business transactions.* The Court held that the amount payable by the licensees based on the bids offered by them in auctions and based on "fixed and assessed fees" is neither a fee in the technical sense nor a tax but is like the price of a privilege, there is no question of the Financial Commissioner lacking the power to organize auctions to authorize the recovery of any amount which is not a fee properly so-called.

40. Accordingly, by applying the above principles to the facts of the present case, it is apparent that the State Government, in this case, has only parted with its exclusive privilege and permitted the

petitioners to undertake casino operations, which are otherwise not even the legitimate objects of any trade, occupation or business. The license fee so-called is the price or the consideration for parting with such privilege, which is exclusively owned and controlled by the State Government.

41. Therefore, even though Section 13A of the said Act or the notifications issued thereunder refer to such charges as "fees", "non-recurring fees", or "recurring fees", it is not the terminology that is decisive. Very clearly, these amounts are nothing but consideration for the Government parting with its exclusive privilege to deal in gambling, which is otherwise prohibited under the said Act.

QUID PRO QUO AND THE REASONABLENESS OF FEES.

42. Based upon the discussion on the legal relationship between the Casino licensees (Petitioners) and the State Government and the true character of the fees, the arguments based on *quid pro quo*, the correlation between the fee rates and services rendered by the Government, whether during closure periods or otherwise, reasonableness will have to be rejected.

43. The decisions relied upon by Mr Rao and Mr Rajadhyaksha were not even remotely in the context of the consideration charged by the Government for parting with its exclusive privilege to deal with *extra commercium* activities involving liquor and gambling. These decisions, therefore, cannot be applied in the context of the fundamental issues that arise in these petitions. Based upon such contentions, the petitioners cannot wriggle out of the contractual obligations solemnly undertaken by invoking the extraordinary jurisdiction and, to some extent taking undue advantage of a National disaster.

44. As it is, there is gradual obliteration of the distinction between a tax and a fee on a conceptual level, as explained by the Hon'ble Supreme Court in paragraphs 55, 56, and 60 in *Jalkal Vibhag Nagar Nigam and ors (supra)*, the distinction between a tax and fee has substantially been effaced in the development of our constitutional jurisprudence. This differentiation, based on the element of a quid pro quo in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point where it lacks any practical or constitutional significance. The service may not be provided directly to a person as distinguished from a general service provided to the members of a group or class of which that person is a part.

45. The Court holds that as the law has progressed, it has come to be recognized that there need not be any exact correlation between the expenditure incurred in providing a service and the amount the State realizes. The Court explained that the gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject matter of several decisions of this Court. Because of this consistent line of authority, the practical and even constitutional distinction between a tax and a fee has been weathered down.

46. In the present cases, it would not be correct to hold that the State renders no regulatory or other services to the Petitioners in particular and the casino operators in general. For example, most casino vessels are parked in the Mandovi River, accessible from spots that could be legitimately described as the heart of the Capital city's commerce.

47. The pressures the very existence of such casino vessels in the Mandovi River exerts not only on the navigation but on parking, clearance of garbage, regulation to ensure that no sewage is discharged in the river, and policing because of the nightly hours through which such casino operates, cannot simply be wished away. Government staff is involved in regulation. Similar services

are rendered by the State even to onshore casinos and the thousands of tourists that flock to such casinos.

48. Additionally, that such licenses were issued to the petitioners without even a modicum of attempt to determine the price that some highest bidders would be willing to pay for such privilege is not an irrelevant factor. At least offshore casinos are parked right in the centre of the Mandovi River, at a spot that can be described as the city's heart. This is public property. The Government is entitled to get the best price. The public trust doctrine requires that even the use of public property must be permitted to the highest bidder unless there are convincing reasons to admit otherwise. Therefore, the license fee rates and their manner of recovery must also be considered from this perspective in the present case.

49. Therefore, Mr Rao's contention about only one or two officers being sufficient to regulate the activities conducted by the casinos cannot be accepted. The arguments based upon the principle of quid pro quo, whether during or beyond the closure periods, also cannot be accepted.

50. Firstly, the levy, though styled as fees, is nothing but the consideration that the Petitioners must pay to the State

Government for parting its exclusive privilege to deal in the pernicious activity of gambling. Second, The State Government renders regulatory services for such activities, which meets the test of broad correlation, even though such compliance may not be essential.

ARBITRARINESS, UNREASONABLENESS, AND UNFAIRNESS.

51. The petitioners' next contention is about the alleged '*palpable arbitrariness, unreasonableness and unfairness*' in the Government insisting that the petitioners pay A.R.F. during the two closure periods.

52. The proposition that the Government must not act arbitrarily, unreasonably or unfairly in the contractual sphere (whether at the stage of entering into the contract or during its execution) is well-established and admits of no serious debate. Moreover, the decisions referred to in para 6.5 support this proposition.

53. Therefore, the only question is whether the Government, in the facts and circumstances of the present case, has acted with '*palpable arbitrariness, unreasonableness and unfairness*' by not exempting the petitioners from paying A.R.F. during the closure

periods and insisting upon compliance with the terms and conditions of the license as prescribed by the said Act and the notifications issued thereunder.

54. The foundation of the above argument was based upon the decisions of the learned Single Judges of the Madras and Delhi High Courts in *R. Narayanan (supra)* and *Geeta Jeena (supra)*. The petitioners also contended that the Government, as a contracting party prohibited casino operations during the closure period. Therefore, the Government's insistence that the petitioners pay A.R.F. during this period was palpably arbitrary, unreasonable and unfair, thereby infringing Article 14 of the Constitution.

55. The above argument proceeds on at least two premises assumed by all the petitioners. First, the Government, acting as one of the contracting parties, breached the contract by preventing the petitioners (other contracting parties) from undertaking casino operations during the peak of the pandemic crisis (closure periods). Second, the petitioners were prevented from undertaking the casino operations under their license during the two closure periods, solely and exclusively due to the closure or lockdown orders issued by the State Government. If the

petitioners' assumptions are not suitable or justified, then the petitioners' arguments must fail.

56. Regards the first assumption, there is no serious allegation of breach of contract by the Government in the pleadings. Even during arguments, we found considerable hesitation in alleging any direct breach of contract on the Government's part. However, it was submitted that, in a sense, the Government breached the contract by ordering a lockdown or closure of the casino business. Even this hesitant argument was backed by no pleadings.

57. In imposing lockdowns or closures of several operations, industries and activities (of which a casino is only one), the State Government, in our opinion, was not acting as a "contracting party" or "licensor" under some contract with the petitioners. These decisions were in the context of the State Government's duty and capacity as a welfare State. If the State Government were to have confused its role under the so-called contracts with the casino operators and its role as a welfare State, that would perhaps amount to an arbitrary exercise of power. The State's role under a contract cannot detract from or even influence the State's role as a welfare State.

58. The observations in the decisions cited on behalf of the Petitioners about the State wearing two hats, speaking in two voices, or acting as Dr Jekyll and Mr Hyde were in an entirely different context. The Government's role as a contracting party and as a welfare State combating a pandemic cannot be confused. The petitioners have failed to plead and establish any breach on the State Government's part.

59. Further, the petitioners could not demonstrate that the State Government acted as a contracting party or a licensor when it issued the lockdown or closure orders at the height of the Covid'19 Pandemic. Significantly, there was no challenge to the so-called breaches or the lockdown or closure orders that had no nexus whatsoever with the so-called contracts or even the provisions of the said Act and notifications issued thereunder. For all these reasons, the first of the assumed premise fails.

60. Regarding the second assumed premise, it is significant to note that none of the petitioners has, and perhaps could have, pleaded that they were in any realistic position during the closure periods to undertake their casino operations. Neither any pleadings nor contentions urged that if the State Government had not imposed the lockdowns, the Petitioners could have realistically undertaken the casino operations during the peak

epidemic periods, the National Government directives or directives by Magistrates acting under Section 144 Cr.P.C., notwithstanding.

61. The National Government or the National Disaster Management Authority functioning under the D.M.A. had no direct nexus with the so-called contracts between the petitioners and the State Government. Yet, these authorities issued lockdowns and closure directives binding on the State Government and all those to whom they were directed and intended to apply. Therefore, even absent the lockdown or closure directives by the State Government, the petitioners were in no position to undertake the casino operations during the closure periods when the Covid'19 Pandemic was at its peak.

62. Even the Magistrates acting under the Cr. P.C. cannot be equated to the "State Government" acting as a contracting party or a licensor under a casino licence. The Magistrates exercise independent powers and jurisdiction under the Cr. P.C., which has nothing to do with the so-called contracts between the petitioners and the State Government. Therefore, even absent the lockdown or closure directives by the State Government, the petitioners were in no position to undertake the casino operations

during the closure periods when the Covid'19 Pandemic was at its peak.

63. The lockdown restrictions or closure directives by the National, State or independent authorities apart, the circumstances during the peak epidemic were such that none of the Petitioners has even claimed they were pragmatically poised to undertake casino operations during the two closure periods.

64. Under the said Act and the notifications issued thereunder, the people from the State of Goa (locals) are barred entry in casinos, whether during Covid times or otherwise. Therefore, casinos rely and can rely only on foreign and domestic tourists.

65. There is no dispute that during the peak epidemic periods (including the two closure periods), there were unprecedented travel restrictions, quarantine protocols, and other remedial or preventive measures to contain the effects and spread of the Covid'19 Pandemic. Considering the unprecedented death toll and shortage of medical literature dealing with the deadly virus, even the tourists, out of self-survival instinct, were not venturing out or gambling on their lives.

66. Therefore, the petitioners have not and could not have pleaded that, but for the State Government's lockdown or closure orders, they were fully poised to undertake their casino activities during the closure periods at the height of the Covid'19 Pandemic. Moreover, there are no pleadings, and there is material to the contrary that even absent the State Government's closure orders, the Petitioners were in no position to operate their casinos during the two closure periods. Therefore, even the second premise of the petitioners' arguments also fails.

67. Therefore, there was nothing arbitrary or unreasonable in imposing the lockdowns. There was also nothing arbitrary or unreasonable in denying exemptions or waivers. Moreover, in the absence of any pleadings that the petitioners were in a position to continue with their casino operations and it is only on account of the closure orders or the lockdown orders imposed by the State Government that the petitioners have incurred some losses, there is no question of grant of any relief to the petitioners.

68. As a corollary, we cannot discount the Government's contention about the petitioners attempting to obtain undue advantage from the unfortunate circumstance in which the State Government had to issue lockdown or closure directives. Based on such undue and unfair advantage, the petitioners cannot

deprive the State Government of the much-needed revenue of almost Rs.321 Crores (Rupees Three Hundred & Twenty-One Crores).

69. The Petitioners' argument (without any pleadings to back such argument) that they were forced by or, in any case, only by the lockdowns or the closure orders issued by the State Government sounds opportunistic and to obtain undue commercial advantage from a National disaster.

70. Besides, apart from vaguely arguing (without adequate pleadings) that the State Government as the contracting party was in breach of the contract by closing down casino operations at the height of the epidemic crisis, none of the Petitioners challenged the so-called breach. Instead, the attempt is to draw an unprecedented gain of about Rupees Three Hundred & Twenty-One crores by not paying the agreed consideration merely because this portion was deferred and payable as A.R.F. As it is, during these two closure periods, even absent the closure orders, the Petitioners were not in any position to undertake casino operations.

71. At least a writ Court exercising extraordinary and equitable jurisdiction cannot assist the Petitioners' attempt and deprive the

State of its legitimate revenue of almost Rs. 321 Crores (Rupees Three Hundred & Twenty-One Crores) for parting with its exclusive privilege. Moreover, any financial relief to the Petitioners in such tragic circumstances would be at the cost of taxpayers, many of whom were also seriously affected by the national disaster. This figure is very high for a small State like Goa, which is reeling under severe fiscal debt.

72. If the State were not to insist upon recovery of this amount, the burden would pass on to the honest taxpayers, who would have to pay more or those in need, who would receive proportionately less welfare and development. Indeed, it is unreasonable to expect that such *extra commercium* activities should be directly or indirectly subsidized by the taxpayers or waiver of Rs.321 crores (Rupees Three Hundred & Twenty-One Crores) be granted in such tragic circumstances to casino operators.

73. By the Petitioners' logic, similar waivers or exemptions from the payment of crores of rupees might have to be granted by the Government to several establishments, licensees, etc., including perhaps the entire liquor industry because even Bars were affected by the lockdowns. The learned Counsel for the Petitioners argued that the Hon'ble Supreme Court had rejected

the floodgates argument. True, but that was mainly in the context of opening the floodgates of access to justice. Given the State's limited resources and priorities, such issues are not irrelevant in determining the reasonability of the State's action.

74. In this case, the petitioners seek to pass off their burden to the people and honest taxpayers. This petition is an attempt to seek public subsidies for the casino operations. Ultimately, the State Government functions based on the taxes collected from its people. Suppose the State Government is compelled to forego this amount of Rs.321 crores (Rupees Three Hundred & Twenty-One Crores). In that case, this amount will ultimately have to be recouped by taxes or by abandoning or postponing some of its functions as a welfare State. The question of reasonableness, arbitrariness and fairness must also be considered from this perspective. This perspective is not entirely irrelevant, as suggested on the petitioners' behalf.

75. In *State of M.P. V/s. Nanldlal Jaiswal*⁴⁰, the Hon'ble Supreme Court has held that while considering the applicability of Article 14 to a case of grant of exclusive right or privilege to manufacture and sell liquor, the courts must bear in mind that having regard to the nature of the trade or business, the Court

40 1986 4 SCC 566

should be slow to interfere with the policy laid down by the state government for grant of licenses for manufacture and sale of liquor.

76. Accordingly, because of the inherently pernicious nature of the commodity, the Court would allow a considerable measure of latitude to the State Government in determining its policy of regulating the manufacture and trade in liquor. Moreover, the grant of licenses for the manufacture and sale of liquor would essentially be a matter of economic policy where a court would hesitate to intervene and strike down what the State Government has done unless it appears to be plainly arbitrary, irrational or irrational or malafide.

77. Similar principles would apply to gambling through casino operations. The Hon'ble Supreme Court has rejected contentions quite similar to those of the present Petitioners in the context of the liquor trade. Accordingly, the Petitioners do not invoke Article 14 by alleging discrimination *inter se* between the casino operators. These Petitions are by practically all or on behalf of all the casino operators in the State.

78. In *State of Bihar v/s. Nirmal Kumar Gupta*⁴¹, the statutory rules required the auction purchaser to pay the licensing fees from the settlement date, not the actual license issue date. However, the petitioner contended, and the High Court allowed the payment of license fees from the date of the license by holding that before the license issue, no production was possible. The High Court, in effect, condoned the non-payment of license fees for the period between the date of settlement and the date on which the license was issued.

79. The Hon'ble Supreme Court, upon considering *Nandlal Jaiswal (supra)*, *P.N. Krishna v/s. Government of Kerala*⁴², *Govt. of T.N. V/s. K. Vinayagya Murthy*⁴³ and *State of Punjab v/s. Diwan's Modern Beverages Ltd.*⁴⁴ held that the nature of the liquor trade, the role of the State, the economic concept of the policy, the limited attractability of Article 14 of the Constitution as regards the legislation or policy, the restriction inherent in the policy and the duty of the Court were sufficient factors not to condone the default in payment of the license fee from the date of settlement.

⁴¹ (2013) 2 SCC 565

⁴² (2002) 7 SCC 104

⁴³ (1972) 2 SCC 442

⁴⁴ (2004) 11 SCC 26

80. In *Issac Peter (supra)*, the Hon'ble Supreme Court was concerned with the issue of the failure on the State's part in supplying arrack undertaken by it to supply and whether, on this ground, the licensees were entitled to rebate/remission in the amounts payable by them under the contracts. The licensees, like the petitioners in the present case, had invoked Article 14 of the Constitution and the doctrines of reasonableness, fairness and non-arbitrariness. The licensees had also relied upon decisions of the Hon'ble Supreme Court similar to those of the present petitioners.

81. The Hon'ble Supreme Court, however, held that the contract between the parties was governed by statutory provisions, i.e. provisions of the Act, Rules, the conditions of the license and the counterpart agreement. They constitute the terms and conditions of the contract. They are binding both upon the Government and the licensee. Neither of them can depart from them. It is not open to any officers of the Government to either modify, amend or alter the said terms and conditions, not even to the minister for excise.

82. The Court held that when conditions are statutory, it would not be permissible to say that some other condition or term was agreed upon or implied between the parties, which is

not found therein. Moreover, even any implied term should be consistent with the express terms of the contract and not otherwise.

83. The Court ruled that there was no statutory obligation on the State to supply to the licensees any arrack beyond the minimum guaranteed quota. Besides, the Court found that the Government had supplied whatever it could, and merely because the licensees may have incurred commercial losses, their arguments based on arbitrariness, unreasonableness or the principle of Sections 55 and 56 of the Contract Act could not be countenanced. (Here, the Petitioners before us have clarified that they were not invoking the Doctrine of frustration).

84. The Court held that the licensees took a calculated risk or were not wise in offering their bids. These could not be grounds for relieving them of their contractual obligations. The Court held that in such contracts, there is always an element of risk. Many unexpected developments may occur, which may either cause loss to the contractor or result in large profits. Take the case of an arrack contractor. There may be abundant supplies in one year accompanied by good crops induced by favourable weather conditions; the contractor will make substantial profits during the year. In another year, the conditions may be unfavourable and

supplies scarce. The contractor may incur a loss. Such contracts do not imply a warranty - or a guarantee - of a profit to the contractor. It is business for the contractor - profit and loss being normal business incidents. There is no room for invoking the Doctrine of unjust enrichment in such a situation. The said Doctrine has never been invoked in such business transactions. The remedy provided under Article 226, or for that matter, suits, cannot be resorted to wriggle out of the licensees' contractual obligations.

85. The Court also rejected the arguments based on the Doctrine of fairness by pointing out that this Doctrine can certainly not be invoked to amend, alter or vary the expressed contract terms between the parties. This is so, even if the contract is governed by the statutory provisions, i.e., where it is a statutory contract – or rather more so. It is one thing to say that every contract must be construed reasonably and with regard to its language. But that is not what the licensees say. They seek to create an obligation on the other party to the contract because it happens to be the State. They are not prepared to apply the same rule in a converse case, i.e., where the State has abundant supplies and wants the licensees to lift all the stocks. The licensees will undertake no obligation to lift all those stocks even if the State suffers a loss. This one-sided obligation, in modification of

express terms of the contract, in the name of duty to act fairly, is what the Court could not appreciate.

86. The Court held that in the contracts freely entered into with the State, there is no room for invoking the Doctrine of fairness and reasonableness against one party to the contract (State) to alter or add to the terms and conditions of the contract merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make a profit or incur a loss is no concern of the State. In law, it is entitled to its money under the contract. It is not as if the licensees will pay more to the State if they make substantial profits.

87. The petitioners claim that they are not seeking any exemptions or waivers. Yet, in support of their charge of discrimination, the petitioners have pleaded that some commuters or specified industries were granted some concessions, and no concessions have been granted to the petitioners. In our opinion, the claim that the petitioners are not claiming any exemptions or waivers is only a play of words or an exercise in semantics.

88. In fact, the petitioners are seeking exemptions or waivers by challenging the impugned communication that denies them waivers, exemptions, or refuses to relieve them from their contractual obligations. The contention is not put forth plainly only because the petitioners know that a writ of mandamus would not lie to compel the State Government to give waivers and exemptions. Therefore, what the petitioners cannot get directly, the petitioners must not seek indirectly.

89. The State Government, in this case, after considering the petitioners' position and representations, did not insist upon the petitioners paying A.R.F. in terms of the statutory schedule. Besides, even penal interest of 12% p.a. has been waived. Therefore, extending the payment schedule and giving the petitioners sufficient time to recoup any alleged losses was certainly a concession granted by the State to the petitioners.

90. However, to expect that the State Government should extend the same concessions or similar concessions as may have been extended to some small shopkeepers or some commuters or to those who were on the verge of being completely crushed due to the Pandemic is not by any means either a reasonable or a legitimate expectation. Nevertheless, no arbitrariness or unfairness could be alleged if the State does not yield to such insistence or expectation.

91. The Doctrine of equality in Article 14 does not require the State to treat all alike. Only the like must be treated alike. Besides, whether any concession is necessary, the concession's nature and quantum are all executive and fiscal policy matters. Typically the Courts have a very minimal role in such issues.

92. The Government's position in a welfare State is comparable to that of parents in a family set-up. In distressed situations, the parents must take several measures to make ends meet. For example, parents may have to make additional provisions to provide milk to the youngest or the most vulnerable, whose survival may be at stake. The elder or the robust siblings made to pull on without milk for some days cannot complain of hostile discrimination. Any such insistence might sound unfair and unreasonable. Equality guaranteed by Article 14 is amongst

equals. Therefore, adopting equal standards to unequal situations might equally violate Article 14 of the Constitution.

93. In *Small Scale Industrial Manufacturers' Association (supra)*, the Hon'ble Supreme Court explained that the scope of judicial review in such matters is minimal. Accordingly, several reliefs were applied for considering the Covid'19 Pandemic situation. The reliefs included a grant of moratorium to repay loans, waiver of the moratorium period already granted, waiver of interest during the moratorium period, etc.

94. The Hon'ble Supreme Court held that the judges are not experts in economic and fiscal regulatory matters and thus should not encroach upon these areas and must be more reluctant to impugn the judgment of the experts who may have concluded unless the Court is satisfied that the decision is illegal itself. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in the exercise of the power of judicial review, must not ordinarily interfere with the policy decisions unless such policy could be faulted on the grounds of malafides, arbitrariness and unfairness.

95. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. Further, economic activities

should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. Policy decisions regarding various financial/relief packages declared by the Government and R.B.I. must not ordinarily be judicially reviewed. Accordingly, no writ of mandamus is issued for granting such packages or modifying such packages.

96. In *Indian School, Jodhpur & Ors. (supra)*, taking note of the disastrous effects of the Covid'19 Pandemic, the Rajasthan High Court ordered the scaling down of the fee structure of private unaided schools. However, the Hon'ble Supreme Court reversed the High Court by holding that the fee structure formulated under the Statute could not have been interfered with, even based on humanitarian considerations by some executive action completely disregarding the statutory mechanism.

97. The contention about the D.M.A. Act, 2005, obliging the D.M.A. to formulate policies and plans to include mitigation measures for persons affected by the disaster, was disposed of by holding that such measures are aimed merely at reducing the risk/impact or the effects of a disaster. Therefore, expansive meaning cannot be assigned to the provisions of the D.M.A. Act to include the powers to reduce school fees of private unaided schools, albeit fixed following the law.

98. In *K. Ramanathan (supra)*, The Hon'ble Supreme Court was concerned with the provisions of the Essential Commodities Act, 1955, which empowered the Government to regulate several aspects of essential commodities like sale, purchase, transportation, storage, price fixation, etc. Specific measures adopted by the State under this Act were challenged.

99. The Hon'ble Supreme Court turned down the challenge by observing that surely, when a part of the country is verging on conditions of acute shortage or even famine, it is expected of the Government to procure foodstuffs from surplus areas and transport the same for distribution in deficit areas. In the State of Tamil Nadu, like some other States, rice and paddy are the two most essential for the sustenance of human life. It is amply borne out from the material on record that due to the failure of the southwest and northeast monsoons in successive years and the consequent poor rainfall, there was a steep fall in paddy production. In the circumstances, the State Government had no other alternative not only to reimpose a compulsory levy on the producers of paddy to the extent of 50% but also to introduce a scheme for a monopoly purchase of paddy by the Government to build up its buffer stock for distribution through the public distribution system throughout the State. Hence, if one part of the State faces a famine or even an acute shortage of foodstuffs, it

is not unreasonable for the Government to acquire foodstuffs from the surplus areas and distribute them in areas where they are most needed.

100. In our opinion, the issue of exemptions and waivers are issues in the realm of fiscal or executive policy. Judicial review is minimal. Courts seldom direct the executive to formulate a policy or interfere with a policy's terms unless demonstrated as arbitrary and unreasonable.

101. The petitioners, as noted earlier, should have deposited the A.R.F. on or before March 31 of the relevant year. This is what the petitioners failed to do. Merely because the State Government may not have insisted upon timely deposits does not mean that the petitioners can take some advantage of these gestures of the State Government. The State Government has extended concessions to the petitioners by deferring the payments. Learned Advocate General's statement about dropping interest @ 12% p.a. on the arrears is also, in a sense, a concession.

102. For all the above reasons, the State Government's denial of waiver or exemptions cannot be held as a palpably arbitrary, unreasonable or unfair exercise of power. Neither the facts nor the precedents support such contention. Therefore, the State

Government has not breached the equality mandate under Article 14 of the Constitution. Thus, the Petitioners cannot wriggle out of their obligations based upon such a contention.

DOCTRINE OF LEGITIMATE EXPECTATION.

103. The arguments based on the Doctrine of legitimate expectation also cannot be accepted in the present case. *Food Corporation of India (supra)* provides that whether an expectation is legitimate is a question of fact that must be determined not according to the claimant's perception but in the larger public interest. Further, legitimate expectation becomes enforceable if State fails to give due weight to it.

104. In this case, as noted earlier, it is not as if the State Government did not consider the petitioners' contentions and representations. Some concessions were extended. Even the interest component has now been waived. A statute and statutory notifications govern the relationship between the parties. No breach on the Government's part has been pleaded or established. In such a situation, therefore, based on the Doctrine of legitimate expectation, no relief can be granted to the petitioners.

105. Issac Peter (Supra) considers the scope of this Doctrine in similar circumstances. As discussed above, the findings and observations suffice to reject the contention based on the legitimate expectation doctrine.

FORCE MAJEURE

106. Insofar as a force majeure event is concerned, firstly, there is no clause in the so-called contract on which such a claim could be raised. Secondly, the material on record indicates that the petitioners were already in default by not paying the A.R.F. on or before March 31 in advance. Thirdly, the obligation to pay the recurring and non-recurring fees crystallized on the license issue date.

107. The license fees, as noted earlier, are nothing but the consideration that the petitioners must pay for the State parting with its exclusive privilege. The State could have charged this amount for the five-year term in advance at the license issue stage or could have charged this amount in convenient instalments.

108. The State Government, in this case, has adopted a combination of two modes. A portion was charged as a non-recurring fee at the time of issue of the license. The balance had

to be paid through annual recurring fees in advance each year. Thus, there were no further obligations to be discharged by the State Government in this regard.

109. The argument based on *force majeure* purports to equate the legal relationship to that of a license under the Easements Act or a lease under the Transfer of Property Act. As noted earlier, this is not correct. The petitioners, it appears, seek to draw undue mileage from a tragic national disaster by using this crisis in a self-serving manner. At least the Writ Court cannot lend assistance to such a cause.

110. The decision in the case of *R. Narayanan (supra)* is distinguishable. That was a case of a lessee of the Corporation, and the Court, ultimately invoked the principles of force majeure even though the same was not a part of the contract. Similarly, *Geeta Jeena (supra)* is also distinguishable on the same ground.

111. These two cases are in no manner comparable to the petitioners' case. The Court noted that the license fee currently demanded was not very high, and the number of tenders was lapsing as there were no bidders for these shops. Thus, it was held that the DTIDC would not incur any losses if the allottees were given an extension to the license, subject to payment of the

license fee as per the license agreement and the nominal enhancement for a further period. No special circumstances as prevailed in the said two cases obtained in the present cases. Besides, the position of small shop-holders in the said two decisions is incomparable to the position of the Petitioners in the current cases.

112. Both the decisions relied upon by the petitioners were not concerned with the consideration for the grant of a privilege. The so-called contracts between the Government and the petitioners are not executory. These are cases where the consideration amount was fixed. Only a portion of the consideration amount had to be paid over five years through annual recurring fees. Therefore, based on the force majeure event, the petitioners can claim no exemptions or waivers. Consequently, denying such exemptions or waivers by the impugned communication cannot be stigmatized as an arbitrary or illegitimate exercise of powers by the State Government.

113. In *Haliburton Offshore Services vs Vedanta Ltd. & Anr.*⁴⁵, the Delhi High Court held that every breach by non-performance cannot be justified or excused merely on the invocation of COVID'19 as a *force majeure* condition. The *force*

⁴⁵ 2020 SCC OnLine Delhi 542

majeure clause is to be interpreted narrowly and not broadly. The parties should be compelled to adhere to contractual terms and conditions, and excusing non-performance would be only in exceptional situations. The Court found that the contractor had breached the contractual terms even before the lockdown.

114. The Delhi High Court in *Ramanand vs Girish Soni (supra)* held that waiver claims could be considered if the *force majeure* clause expressly provides for it. Without such a clause, the relationship between landlord and tenant is governed by the Transfer of Property Act 1882. The Court referred to the provisions of Section 108(B)(e), which requires that the property be wholly destroyed or rendered permanently unfit for use before any exemption or waiver could be claimed. In *Raja Dhruvdev vs Mohinder Singh (supra)*, the Hon'ble Supreme Court has held that the expression "substantially and permanently unfit" does not include a temporary non-use.

115. Thus, it is not as if, based upon a *force majeure* event, the Courts have invariably granted waivers or exemptions. Because the State is one of the contracting parties and is expected to act fairly and reasonably, exemptions or waivers cannot be granted under all circumstances. The private contracting parties cannot be invariably excused from compliance with their contractual

obligations. The Government extended some concessions. The issue as to whether such accommodations were adequate or not is not a matter which admits critical examination in judicial review. These are essentially matters of executive and fiscal policy.

116. For all the above reasons, no relief based upon the force majeure doctrine can be granted to the Petitioners.

WRIT PETITION NO.161/2023

117. Insofar as W.P. No. 161 of 2023 is concerned, based upon the area reduction, some benefit is already granted to the petitioners. However, the petitioners now claim that similar benefits should be extended by the same logic even for the earlier period.

118. At least in the returns filed on behalf of the State Government, there is no precise response to this argument or this ground. However, an affidavit dealing with the main grounds in this batch of petitions was filed. At the same time, we are unsure whether benefits must be extended without determining relevant factual aspects like actual user etc. Examination of this issue by the Court would possibly involve investigating the disputed

questions about the dates from which the reduction of gaming areas would apply and other such matters.

119. Therefore, the interests of justice would be met if the petitioner in Writ Petition No.161/2023 is permitted to represent the Government on the impact of the request to reduce the gaming area on the quantum of license fees demanded. If such representation is made, the State Government must dispose of the same according to the law as expeditiously as possible and within three months from receipt. Therefore, all contentions of all parties on this issue are kept open.

CONCLUSION AND RELIEF.

120. The challenge to the impugned order dated 25.11.2022 fails and is rejected. However, in terms of the learned Advocate General's statement, the State Government will not recover the 12% penal interest referred to in the impugned order dated 25.11.2022. This is provided the Petitioners pay the entire principal amount within four weeks.

121. Therefore, these petitions are disposed of, and the interim orders are hereby vacated. Accordingly, the concerned respondents can withdraw the amounts deposited by the petitioners in this

Court since this amount represents only fifty per cent of the arrears of A.R.F.

122. The Rule in these petitions is disposed of in the above terms. However, liberty is granted to the Petitioners in Writ Petition No. 161/2023, as indicated in paragraph 119 above.

123. Misc. Civil Applications in all these Petitions are also disposed of.

124. No orders for costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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