
(1990) 08 KAR CK 0055
In the Karnataka High Court
Case No : W.P. No. 10464/1983

Azico Traders

APPELLANT

Vs

Coffee Board and Another

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 2 KarLJ 334

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-This writ petition is directed against the circular letter dated 24-6-1980 under Annexure-B claiming interest and penalty from the petitioner on the ground that it is invalid, illegal, arbitrary and ultra vires the powers of the respondents and also as being in contravention of public policy and fundamental right of the petitioner under Article 19(1)(g) of the Constitution. The legality of the Circular dated 23-9-81 under Annexure-C is also challenged. In short, the petitioner has questioned the levy of godown charges and insurance charges and has sought for refund of interest to the petitioner in a sum of Rs. 14,199-46.

2. The petitioner is an Exporter of coffee and has registered as Exporter with respondent-1 Coffee Board. Section 14 of the Coffee Act, 1942 ("the Act" for short) requires every owner of coffee estate to register himself with the Coffee Board. Section 17 of the Act prohibits sale of coffee in the Indian market by any registered owner for which no internal sale quota is allotted to the estate and at prices higher than those stipulated by the Coffee Board. The registered exporter is prohibited from sale of coffee except as provided under Section 18 of the Act. Section 20 of the Act confers on the Coffee Board the exclusive right to export coffee from India and the exported coffee cannot be reimported into India except in accordance with the permit granted by the Board. All coffee produced by a registered estate in excess of the internal sale quota allotted is required to be delivered to the Board and it is the responsibility of the Board to take suitable measures to market the coffee and all sales thereof shall be conducted by or through the Board. Under Section 47 of the Act, all contracts for sale of coffee to

the extent they are repugnant to the provisions of the Act shall be void.

3. For sale of coffee in the course of export, the Coffee Board conducts auctions known as "export auctions" periodically and in order to participate in these auctions, the exporters are required to register themselves with the Board and the Board maintains a list of registered exporters and gives each of them a permit which authorises them to take part in the export auctions. The permit contemplates payment of security deposit as well as a standing deposit from the registered exporter. If it is found that the permit holder has sold or attempted to sell coffee purchased at the export auction has sold the same in the internal market without the written permission of respondent-2, the permit is liable to be withdrawn and cancelled by respondent-2. Violation of any of the conditions of the permit entails cancellation of the permit. Participation in the export auction and the conduct of the auction are based on the terms and conditions of sale of coffee in the course of export as provided under Annexure-A.

4. The purchaser at the auction is given 25 days" time to make payment of the sale consideration and thereafter he will be required to pay interest at 18% per annum from the 26th day to the 60th day and at 24% per annum from the 61st day to the 85th day. The power to fix the rates is conferred by clause 14 of Annexure-A and the rates in force at the time of the purchase are contained in the impugned circular letter under Annexure-B. The time for export of the purchased coffee could be extended beyond a period of 90 days from the date of auction by the 2nd respondent if an application is made by the exporter subject to such conditions as may be imposed by him and subject to payment of such charges at such rates as the Marketing Committee may prescribe. The rates of penalty prescribed under Annexure-B dated 24-6-1980 are as follows:

(1) Extension from 91st day to 180 days Rs. 3/- per 50 Kgs for 30 days or part thereof

(2) For extension from 181 days to 270 days Rs. 9/- per 50 Kgs for 30 days or part thereof

(3) For extension from 270 days to 360 days Rs. 15/- per 50 Kgs for 30 days or part thereof

5. In respect of coffee purchased and stored in the various godowns by the agents of the Coffee Board on behalf of the auction purchaser, godown rent is charged in accordance with the circular dated 23-9-1981 vide Annexure-C and insurance is charged at 0.03% per month or part of a month on the export auction purchase price of coffee purchased, which is not removed from the godown. The petitioner having purchased 21.82 tonnes of coffee at the auctions on 6-9-1979, 19-9-1979 and 27-1-1982 could not export the same on account of some difficulty. The petitioner, it is stated, had paid the Coffee Board for the coffee purchased and had also paid interest whenever charged. But he is yet to obtain possession of the coffee and export it on account of some difficulty as stated earlier. For quite some time, the position continued to be so. It is now

submitted that the petitioner's financial position has improved and he is now in a position to take delivery of the export coffee and he is also capable of exporting the same out-side the country. But the difficulty confronted by the petitioner is that he has to pay the penalty prescribed by the Coffee Board if he wants to take delivery of the coffee for the purpose of export. The grievance of the petitioner is that clause 14 of Annexure-A gives arbitrary and unguided powers to respondent-2 to fix rates without the consent of the petitioner and that the rates so fixed under Annexure-B are usurious and that the levy of Rs. 14,199-46 is not valid in law though the said amount is called as interest on delayed payment. Annexure-B authorises respondent-2 to impose penalty and, according to the petitioner, it is opposed to public policy and infracts the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution. The petitioner has also found fault with the godown charges leviable under Annexure-C since it enables charging at an exorbitant rate resulting in unjust gain to the respondents. Insurance charges at 0.03% per month on the value of the coffee which is stored in the godown till delivery is taken is also questioned by the petitioner and in fact the petitioner has alleged on the basis of information available to him that coffee in the godowns is not insured at all and that the respondents have not disclosed whether such an insurance is in existence.

6. On behalf of the respondents in the statement of objections filed, it is contended that the writ petition is liable to be dismissed in limine since it is not maintainable in the light of a decision rendered by this Court in *Ramesh Enterprises v Coffee Board*, (ILR 1985 Karnataka 982), wherein identical terms and conditions under which the petitioner had incurred liability was considered. It is submitted that the Court took the view on an examination of the contracts between the parties that what subsisted between the parties was only an ordinary contract governed by the Indian Contract Act or the Ordinary Law of Contract and that they are not statutory contracts and therefore writ petitions challenging the claims made by the Board flowing from the terms and conditions of an ordinary contracts are not maintainable. The respondents have also met all the points raised by the petitioner in the detailed counter filed by them.

7. I propose to deal with the preliminary objection raised by the respondents in regard to the maintainability of the writ petition.

8. It is necessary to advert to the points considered by Puttaswamy, J. in *Ramesh Enterprises's* case while disposing of a batch of writ petitions. The petitioners therein had claimed that the notification on the basis of which sales were held and concluded contains statutory rules framed by the Board under the Act and the agreements entered into between the parties are statutory agreements and that the demands made by the Board are in violation of them and unenforceable in law, entitling the petitioners for refund of the amounts already paid by them. The Board contended that the transactions concluded between the parties are sought to be enforced which are contractual are not statutory in character and that they are not reviewable by the Court under Article 226 of the Constitution

and therefore the claims made by the Board were justified and legal. It is relevant to point out in the instant case that the charges which are questioned by the petitioner flow from the contract. As observed in para-16 of the above decision:

"The notification (Exhibit-A) issued by the Board does not invoke any provision of the Act or the Rules framed thereunder for making them. In this view and otherwise, this Court can only hold that it is only a "tender notification" issued by the Board inviting offers and nothing more than that in its capacity to enter into an ordinary contract governed by the Contract Act or the ordinary law of contract. Sections 5 and 20 of the Act and Rule 36 of the Rules on which very strong reliance was placed for the Petitioners and all other provisions do not stamp or convert the notification into statutory Rules. On a cursory or a close examination of the notification as a whole or any of its terms and conditions, it is impossible to hold that they are statutory Rules."

Again in para-23, the Court observed:

".....When one examines this contract it is crystal clear that what was entered into between the Petitioners and the Board was an ordinary contract between the two contracting parties governed by the Indian Contract Act or the ordinary law of contract and was not a statutory contract or a statutory obligation at all. Even the latest ruling of the Supreme Court in *State of Haryana and others v Lal Chand and others* (AIR 1985 SC 1326) dealing with the difference and distinction between statutory contracts and contracts entered into in exercise of executive powers vis-a-vis Article 299 of the Constitution does not help the Petitioners to hold otherwise."

In para-25, the Court elaborated:

"As seen earlier, two contracting parties, with capacity to contract have entered into a contract and the validity of the same or any of its terms is not in challenge. The terms of a contract on the basis of which the Board claims the amounts or proposes to regulate its actions, however wrong, justified or unjustified on which aspect it is not necessary to dilate at this stage, cannot by any stretch of imagination be elevated to the position of "norms" or "standards" prescribed by the Board in exercise of its statutory or administrative powers. The claim of the Board disputed by the Petitioners, stems from the terms of the contract and that term on any juristic or legal principle cannot be construed as a "norm" or "standard" fixed by the Board in exercise of its judicial or administrative powers to confer jurisdiction on this Court under Article 226 of the Constitution."

In para-28, the Court proceeded to find:

"When once it is held that the contracts entered into between the Petitioners and the Board are ordinary commercial contracts and are not statutory contracts or obligations, on the ratio of the rulings of the Supreme Court in *Har Shankar and*

others etc. v The Deputy Excise and Taxation Commissioner and others etc. (AIR 1975 SC 1121), Kulchinder Singh and others v Hardayal Singh Brar and others (AIR 1976 SC 2216), M/s. Radhakrishna Agarwal and others v State of Bihar and others (AIR 1977 SC 1496), The Bihar Eastern Gangetic Fishermen Co-operative Society Limited v Sipahi Singh and others (AIR 1977 SC 2149), The Divisional Forest Officer v Bishwanath Tea Co. Ltd. (AIR 1981 SC 1368) and the Division Bench ruling of this Court in Mahadeswara Stores v State of Karnataka and others (1983(2) KLJ 20) it follows that these Writ Petitions challenging the claims of the Board flowing from the terms and conditions of an ordinary contract are not maintainable and are liable to be dismissed without examining all other contentions"

I am in respectful agreement with the views expressed in the aforesaid decision and there is no reason why the ratio of the said decision should not be applicable to the fact pattern of this case.

9. In Mahabir Auto Stores v Indian Oil Corporation, (AIR 1990 SC 1031), the Court observed as follows:

"It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in M/s. Radha Krishna Agarwal v State of Bihar, (1977) 3 SCC 457: (AIR 1977 SC 1496). It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s. Radha Krishna Agarwal v State of Bihar at p. 462 (at SCC): (at p. 1499-1500 of AIR) (supra), but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated....." (Emphasis Supplied)

The ratio of the decision would have been of some assistance to the petitioner but for the fact that the principle enunciated is inapplicable in a situation wherein State action is being questioned after the contract has been entered into. It is

not open to the petitioner to seek refuge under Article 14 of the Constitution since it cannot be regarded as a charter for judicial review of State action after the contract has been entered into between the parties. The situation in the instant case is that the contract has already been entered into between the parties and what the petitioner is challenging the demand made by the Coffee Board based on an ordinary contract entered into between the parties and flowing from the terms and conditions thereunder. I am of the opinion that in the facts and circumstances of this case, the writ petition is not maintainable. I do not think it is necessary to consider the other decisions cited by the learned Counsel appearing for the parties since the weight of judicial opinion does not support the stance of the petitioner and particularly in view of the fact that similar contentions in essence and substance were repelled conclusively by this Court in Ramesh Enterprises's (supra) case subsequently confirmed in appeal vide Ramesh Enterprises v Coffee Board, ILR 1989 Karnataka 3537.

10. For the reasons aforesaid, the writ petition fails and is, therefore, dismissed.

Writ petition dismissed.