

(1972) 04 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.P. No. 653 of 1971

Ganesh Trading Company

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-04-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 174(2), 213, 226, 229
Contract Act, 1872 — Section 37
Evidence Act, 1872 — Section 115
Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 — Section 12, 6, 7
Madhya Pradesh Tendu Patton Ke Nirvartan Hetu Nyuntam Dar Nishchayan Adhiniyam, 1972 — Section 2, 2(b), 3
Sales of Goods Act, 1930 — Section 58
Supreme Court Advocates (Practice in High Courts) Act, 1951 — Section 2

Citation : (1972) J LJ 679

Hon'ble Judges : P.K. Tare Shivdayal, J; G.P. Singh, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; Y.S. Dharmadhikari, Advocate General for State, for the Respondent

Judgement

Tare, J.—This is a petition under Article 226 of the Constitution of India by a Contractor, who took the contract of purchase of Tendu leaves from the Government for the year 1970 under the M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, and the M.P. Tendu Patta, Niyamavali, 1965 and 1966, and by this petition, he seeks a renewal of the contract for the years 1971 and 1972 on the same terms.

2. A State monopoly was created by enactment of the M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, which received the assent of the President on 23-11-1964 and which came into force from 28-11-1964. It will be necessary to consider some relevant provisions of the Act later on. The appellant-Firm had purchased the right of collection of Tendu leaves for the year 1970, which provided for a renewal clause for a further period of two years on certain terms.

It may be relevant to reproduce Condition No. 25 of the Tender Notice, which is as follows:-

"25. (1) Unless earlier determined under the terms of the Agreement, there will be yearly renewal of Agreement by 31st October each year by issue of an order by Government in writing. Maximum period for renewal will be up to 31st December, 1972, provided the accepted rate offered for the unit for 1970 season year is more than the rate to be decided by the Government for each circle and Government satisfied that purchaser has fulfilled the following conditions each year and has submitted the application for renewal before the 15th September:-

(a) The purchaser has done satisfactory pruning in the previous year as a result of which the quantity of leaves collected during the year has exceeded by 5 per cent or moreover the quantity notified and also 5 percent or more the quantity collected in the unit during the preceding year.

(b) There was no serious breach of the Act and Rules made thereunder and the Agreement.

(c) The purchaser had paid all dues including penalty, fine etc., promptly and in accordance with the provisions of the Agreement.

(2) (i) The application for renewal will be submitted to the Conservator of Forests, Tendu Patta Circle, M.P., Bhopal and copies of the same will be submitted to the Conservator of Forests in whose jurisdiction the unit is situated in the form as appended to this notice. The form can be obtained from any of the Divisional Forest Officer, on payment of Rs. 25/- for each form.

(ii) There shall be separate application for each unit.

(3) Purchase rate per standard bag applicable for every renewed year shall be the rate calculated by increasing the purchase rate applicable to the preceding year by 5 percent and adding to it the total increase in rates of all the following items during the renewed year as compared to rates fixed for the same items in the preceding years :-

(i) purchase rate payable to growers (subject to the limit of Rs. Twenty per standard bag),

(ii) remuneration payable to Agent.

(iii) handling charges payable to Agent.

(4) The purchaser who has submitted an application for the renewal of the Purchaser's Agreement for the unit shall be bound by his offer and by the terms and conditions of the Agreement till orders of the Government accepting or rejecting his offer are passed. Breach of this condition shall entail forfeiture of security deposit and Government may also black-list the purchaser for a period not exceeding 3 years. In addition the purchaser who has withdrawn his offer shall bear the loss, if any, suffered by the Government in the subsequent

disposal of that unit and this loss, unless paid within 15 days from the date of issue of notice of demand, shall be recoverable from him as arrears of land revenue. For calculation of loss, the following formula will be used :-Amount of loss (in Rs.)- (The rate, offered this year by the purchaser increased by 5 percent purchaser rate obtained in sub-sequent disposal) X number of standard bags notified for that unit.

(5) The purchaser shall execute the fresh Agreement within 15 days from the date of issue of the order granting renewal, after completing all formalities required under conditions of Tender Notice for executing Agreement, failing which the Agreement shall be liable to be terminated by Government and all consequences of termination given in the Agreement shall be binding applicable. Loss to Government, if any, in subsequent sale of leaves in the unit shall be recoverable from the previous purchasers.

3. It is pertinent to note at this stage that sub CI. (1) of Condition No. 25 of the Tender Notice provided for yearly renewal of Agreement by issue of an order by Government in writing and that the renewal could at the most be granted up to 31st Dec., 1972, provided the accepted rate offered for the unit for 1970 season year was more than the rate to be decided by the Government for each circle and that the Government was satisfied that the purchaser had fulfilled the conditions each year as mentioned in sub-Clauses (a), (b) and (c), namely, that the purchaser had done satisfactory pruning in the previous year and that there was no serious breach of the Act and Rules made thereunder and the Agreement. That the purchaser had paid all dues including penalty, fine etc., promptly and in accordance with the provisions of the Agreement. It was also contemplated that an application for renewal will be made each year. It is this term, which has been the subject-matter of some controversy. The terms for renewal are contained in Clause (4) of Condition No. 25 of the Tender Notice and the petitioner does not challenge his liability to get a renewal on the terms as contained in Clause (5).

4. Condition No. 1 of the Tender Notice provided that all provisions of the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 and the M.P. Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966, for the time being in force and in so far as they are applicable to purchases shall form part of terms and conditions of the tender. Although the purchaser contracts for the year 1970 were given sometime at the end of the year 1969, the rates were to be fixed later on and they were accordingly fixed by Notification No. 5686-X-70 dated 7th July, 1970. It may be relevant to reproduce the entire Notification, which is as follows:-

"Under Condition No. 25 (1) of the Tender Notice No. 8004-X-70, dated the 26th November, 1969, published for disposal of Tendu leaves, the State Government hereby fix the following rates for each Circle of disposed of Tendu leaves units of 1970 for renewal during the year 1971. Accordingly all the purchasers appointed through Tenders, Auctions and Negotiations for the disposed of Tendu leaves units of 1970, shall be eligible to submit the applications for renewal:-

5. In the meantime a Proprietary Firm, by name, Harnamdas Jaidayal had filed a Writ Petition, namely, Misc. Petition No. 562 of 1971 (Harnamdas Jaidayal v. The State of M.P. and three others). A Division Bench of this Court by order dated 19-11-1971, allowed the Writ petition and quashed the Notification dated 8-9-1971, published in the M.P. Rajpatra dated 8-9-71, so far as it purported to lay down the rates on the basis of which renewal for the year 1972 was to be granted to the petitioner in that case. Therefore, the State Government by a Writ of Mandamus was directed to grant renewal to the petitioner in that case for the period ending on 31st December, 1972, under Clause 25(3) of the Tender Notice, published in the M.P. Gazette dated 27-11-1969. We shall have occasion to deal with this case later on in some details as its correctness was challenged before the Division Bench, presided over by B. Dayal, C.J. and A.P. Sen, J. The Division Bench by order dated 10-1-1972 expressed the opinion that the matter needed to be heard by a larger Bench. Hence this reference to a Full Bench.

6. After the decision in Harnamdas Jaidayal v. The State of M.P. and others (supra), the Governor in exercise of Legislative powers issued the Madhya Pradesh Tendu Patton Ke Nirvartan Hetu Nyuntam Dar Nishchayan Adhyadesh, 1972, (No; 2 of 1972), published in the M.P. Gazette (Extra-ordinary), dated 18-1-1972. It may be relevant to reproduce Clause 3 of the said Ordinance, which is as follows.-

"Fixation of minimum rates for disposal of tendu leaves for calendar year 1972 in certain cases. Notwithstanding anything contained in any Purchaser's agreement or tender notice relating to fixation of purchase price of tendu leaves on renewal of purchaser's agreement for the calendar year, 1972 or any judgment, decree or order of any Court to the contrary, the minimum rates of disposal of tendu leaves in respect of all the purchasers appointed through Purchaser's agreement for the disposal of tendu leaves unit of 1970 and 1971, and entitled to renewal of the Purchaser's agreement for the calendar year 1972 shall be and shall always be as specified in the Table appended hereto and it is hereby enacted that the renewal of any Purchaser's agreement for the calendar year, 1972, shall be subject to the said minimum rates and they shall be applicable to the purchasers entitled to purchase tendu leaves by virtue of renewal clause of Purchaser's agreement of the calendar year 1971 with effect from the 1st January, 1972 as if the provisions herein contained have been in force at all material times and formed likewise part at all times of the tender notice and the Purchaser's agreement.

7. The effect of the said Ordinance is that all terms inconsistent with the provisions of the Ordinance would stand abrogated and it is only the Ordinance rates that would prevail for the purpose of renewal of Purchaser's agreement for the year 1972. The Learned Counsel for the petitioner did not dispute the legality or validity of the said Ordinance. Therefore, we propose to proceed on the premises that the Ordinance will prevail over all conditions about rates mentioned in the Purchaser's agreements or despite any judgment, decree or

order of any Court to the contrary. The Learned Counsel for the petitioner conceded this position and stated that his client would be prepared to have renewal at the rates mentioned in the said Ordinance for the year 1972.

8. At this stage it would be relevant to advert to the Purchaser's Agreement appended to the Tender Notice, and especially Clause 2, which was in the following terms :-

"Clause 2.- Proviso (1)-Provided that unless earlier determined under the terms of the Agreement, there will be yearly renewal of agreement by 31st October each year by issue of an order by the Government in writing. Maximum period for renewal will be upto 31st December, 1972, provided that the rate for this year is more than the rate decided by the Government for each circle and the Government are satisfied that the purchaser has fulfilled the conditions mentioned in subsequent sub-clauses of that proviso."

As such, there is some slight variation between Clause 1 of Condition No. 25 the Tender Notice and Clause 2, Proviso (1) of the actual agreement executed on the point of renewal. As the purchaser was required to execute an agreement each year, the contention of the learned Advocate General in the case of *Harnamdas Jaidayal v. The State of M. P. and others* (supra) as also in the present case has been that the phrase "this year" would mean the year for which the renewal is sought. On the other band the contention of the Learned Counsel for the Firm *Harnamdas Jaidayal* was that the phrase "this year" meant the year of initial agreement, namely, the calendar year 1970. That contention was upheld by the Division Bench of this Court in *Harnamdas Jaidayal v. The State of M.P. and others* (supra). Again the very same arguments were advanced by the Learned Counsel for both sides and we propose to deal with this aspect instantly.

9. It is to be noted that tenders were to be given only once and they were so given at the end of the year 1969. Clause 1 of Condition No. 25 of the Tender Notice clearly provided for one tender offer only with renewal for two more years on certain stated conditions. No fresh tenders were to be invited for the purpose of renewal. If the rates offered by the tenderer were more than the rates fixed by the Government subsequently, such a tenderer was entitled to the benefit of the Purchaser's agreement as also to renewal as per the terms of the Tender Notice and the agreement. The first respondent went on increasing the rates for renewal for the year 1971 and for the year 1972 the rates were fixed by Ordinance No. 2 of 1972. Thus, if more rates were fixed each year and the tenderers had no option to give fresh tenders for the purpose of renewal, we think that by such interpretation the State Government would be having the autocratic and unjustified power to nullify the agreement just by fixing the rates more than the ones offered by the tenderers. This would be definitely contrary to the specific terms of the Tender Notice and the agreement. Lengthy arguments were advanced by the Learned Counsel on this aspect as also about interpretation of deeds. Presently we propose to deal with those arguments, but we may observe that we are in agreement with the view of the learned Judges constituting the

Division Bench in *Harnamdas Jaidayal v. The State of M.P. and others* (supra) that the phrase "this year" relates to the initial year of agreement, namely, the year 1970. The interpretation sought to be put by the learned Advocate General could only be accepted if the Tender Notice and the agreement had contemplated fresh tenders for every year of renewal. Therefore, by implication the phrase cannot be interpreted to mean the particular year of executing fresh agreement. It will necessarily mean the initial year of agreement, that is, the year 1970. If the agreement had contemplated fresh tenders to be invited for every renewal, there might have been some substance in the contention of the learned Advocate General on this aspect. For this reason we are unable to accept the contention of the learned Advocate General and while rejecting the same, we endorse the view of the Division Bench in *Harnamdas Jaidayal v. The State of M.P.* (supra).

10. In this connection we might advert to the principles indicated by Maxwell on "The Interpretation of Statutes," Twelfth (1969) Edition, at Page 105, Chapter 5, relating to Restrictive Construction. The learned author observed as follows:-
"Sometimes, indeed, the meaning of words is so plain that effect must be given to them regardless of the consequences, (See *Brown v N.C.B* 1962 AC 374, but more often-as the cases discussed in the following pages show-a construction is arrived at with reference to the consequences which must follow from it". It is always proper," Lord Reid has said, that "to construe an ambiguous word or phrase in light of the mischief which the provision is obviously designed to prevent, and in the light of the reasonableness of the consequences which follow from giving it a particular construction" -See *Gartside v. I.R.C.* 1968 AC 553. "If the language, he said elsewhere," is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result. "In the words of Romer L. J.," the Court --When faced with two possible constructions of legislative language, is entitled to look to the results of adopting each of the alternatives respectively in its quest for the true intention of Parliament." In this connection see-*Free Lanka Insurance Company Ltd. v. Ranasinghe* 1964 AC 541 and *Mar-cantile Credit Co Ltd, v. Cross* 1965 2 QB 200.

11. As already indicated earlier, adopting the said principle for the purpose of construing the phrase "this year", we are of the opinion that the interpretation put by the earlier Division Bench in *Harnamdas Jaidayal v. The State of M.P. and others* (supra) was perfectly justified and in the absence of any fresh tenders being contemplated for the renewal for the years, 1971 and 1972, the only rational interpretation would be the one adopted by the said Division Bench.

12. In this connection we might further observe that we are not modifying the language of the Tender Notice and the agreement. But we are only giving it a rational interpretation by adopting the rule of restrictive construction. As already observed earlier, if there had been a provision for fresh tenders for every year of renewal, the contention of the learned Advocate General might have had some substance as to be given a serious thought. But in the absence of the same, we

do not think that we can rationally adopt the Construction suggested by the Learned Advocate General.

13. At this stage we might also advert to one fact, namely, that the first respondent by a telegraphic notice (to be found at page 59 of the Paper Book) dated 31-12-1971 purported to terminate the petitioner's contract on the ground that the instalments were not paid within time. So far as this aspect is concerned, it was not disputed that the petitioner did pay the instalments in time. But what he did not pay was the sales tax said to be due. The question whether the sales-tax was due was a debatable matter and a Division Bench of this Court in *Orient Paper Mill Ltd. v. State of M.P.* 1971 J.L.J. 514 : 1971 R.N. 339: 1971 M.P.L.J. 56, decided on 24-12-1970, had held that when the State Government merely sold, without more, the forest produce like Bomboos and Salai wood naturally growing on its lands, it could not be said that it was carrying on business within the meaning of the definition. Therefore, in respect of sales of forest produce neither the State Government nor the forest department would be a dealer within the meaning of the definition in section 2 (d) of the M.P. General Sales Tax Act, 1959. In that view, it was laid down by the Division Bench that no sales-tax was payable in respect of such sales.

14. However, after the said decision was given by the Division Bench of this Court, the Legislature amended the definition of "dealer" vide Act No. 13 of 1971. The M. P. General Sales Tax (Amendment and Validation) Act, 1971. Section 3 of the said Amendment Act amended section 8 of the original Act and made such sales Taxable. The said amendment was published in the M.P. Gazette (Extraordinary) dated 6-5-1971 and after that publication, the petitioner paid the requisite sales-tax. Thus, the contention of the learned Advocate General that the purported termination of the contract was valid, would in our opinion, not be tenable, as, according to the law declared then, the petitioner was not liable to pay any sales-tax whatsoever, and his refusal to pay sales-tax could not be considered to be a default in the matter of payment of instalments. It is further to be noted that the petitioner paid the requisite sales-tax sometime after the Madhya Pradesh General Sales Tax (Amendment and Validation) Act, 1971 (No. 13 of 1971) was passed. Therefore, the said reason given by the first respondent for terminating the contract could not be a valid and legal reason and the contract could not have been terminated in the manner done. Therefore, for the purpose of this petition, we will treat the said termination to be null and void. The petitioner's liability for sales-tax could only arise after the M. P. General Sales-Tax (Amendment and Validation) Act, 1971, (No. 13 of 1971) was passed by the State Legislature. No other violation of the terms of the agreement was pointed out by the learned Advocate General and as the petitioner was not given the contract for the year 1971, the question of the petitioner's failing to do the pruning etc., would not at all arise. In fact this writ petition has been rendered infructuous so far as the contract for the year 1971 is concerned. For this reason the Learned Counsel for the petitioner confined his relief to renewal for the year 1972 only.

15. With respect to the question of renewal for the year 1972, the learned Advocate General urged that this Court could not perform the functions of the Licencing authority. So far as that proposition is concerned, there can be no doubt that the High Court in exercise of prerogative powers does not perform the functions of the authorities, which by certain Statutes, are required to act in a particular manner. But the High Court can issue certainly Writs of Mandamus ordering the performance of the Act, as was the situation in the Division Bench case of Harnamdas Jaidayal v. The State of M.P., and others (supra). In this connection we might advert to another Division Bench case of this Court, namely, Shanker Prasad Goenka and Another Vs. The State of Madhya Pradesh, wherein the Division Bench laid down that where an authority fails to exercise any discretion at all and declines jurisdiction, it can be compelled by a Writ of Mandamus to exercise jurisdiction vested in it For this proposition the Division Bench relied on the case of Rex v. Board of Education (1902) 2 KB 165 . This view, in our opinion, would stand affirmed by the pronouncement of their Lordships of the Supreme Court in State of Rajasthan Vs. Hari Shankar Rajendra Pal, wherein their Lordships made the following observations:-

"It has been argued for the State that the High Court granted relief to the respondent in excess of what he had prayed, inasmuch as the High Court had directed the Government to renew the respondent's first lease for a period of 5 years with option to further renewal if so desired for another period of 5 years subject to the condition mentioned in R. 30 when the respondent had not prayed for any direction" with respect to the option for a second extension of the lease. The contention is not sound. The relief claimed after the expiry on the period of the first lease, which, according to the respondent, was also to be extended by two years, reads :-"and then, after the expiry of the period of five years the lease be renewed for a period of five years under R. 30 of Rajasthan Minor Mineral Concession Rules, 1955."

The renewal was to be under R. 30. Rule 30 itself requires extension of the lease with option in the lease for obtaining another extension for an equivalent period. This option must be a term of the lease and, therefore, must be incorporated in the lease at the time when the first extension is granted. The prayer, therefore, should be deemed to include a prayer for an extension of 5 years with the necessary option. Even if the prayer was not so made, the High Court was competent to make the direction in accordance with the requirements of the proviso to R. 30. The direction for renewal is, in our view, in full accordance with what the proviso requires."

16. In S.G. Jaisinghani Vs. Union of India (UOI) and Others, ; their Lordships of the Supreme Court made the following observations :-

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of

law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the anti thesis of a decision taken in accordance with the rule of law.- (See Dicey "Law of the Constitution"-Tenth Edn., Introduction, cx) "Law has reached its finest moments" stated Douglas, J. in *United States v. Wunderlich* (1951) 352 US 98, "when it has freed man from the unlimited discretion of some ruler.....Where discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1702) 4 Burr 2528 at p, 2539," means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful.

17. In *the Union of India v. M/s Anglo Afghan Agencies* AIR 1968 SC 713, their Lordships of the Supreme Court with reference to the provisions of the Imports and Exports (Control) Act, 1947, made the following observations :-

"There is no pattern of order or logical sequence in the policy statement; it is a jumble of executive instructions and matters which impose several restrictions upon the rights of citizens. Some of the provisions which impose restrictions upon citizens in the exercise of their right to carry on trade without statutory limits may be open to serious objections, but we do not find it necessary to embark upon an enquiry whether the provision which authorises the issue of import entitlement certificate for the full f.o.b. value of the goods exported is legislative in character Granting that it is executive in character this Court has held that the Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities "

18. It was argued by the learned Advocate General in the present case that the alternative remedy of a Civil suit being available to the petitioner, this Court ought not to exercise its prerogative powers. We may observe that three months have already passed. The plucking season is from April to June. The contract of renewal is up to the end of 31-12-1972. Under these circumstances, it would neither be expeditious nor proper to drive the petitioner to a Civil suit. In this connection we might rely on the pronouncement of their Lordships of the Supreme Court in *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, wherein their Lordships made the following observations : -

"Public bodies are as much bound as private individuals to carry out their representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex-contractu by a person who acts upon the promises, when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if

the contract be not in that form may be enforced against it in appropriate cases in equity. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. this Court held that the following observations made by Denning, J., in *Robertson v. Minister of Pensions* (1949)1 KB 227, applied in India.

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to better its future executive action."

We are in this case not concerned to deal with the question whether Denning, L.J. was right in extending the rule to a different class of cases as in *Falmouth Boat Construction Company Ltd. v. Howell* (1950) 1 AII ER 538, where he observed at page 542 :

"Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer, if they exceed it."

It may be sufficient to observe that in appeal from that judgment *Howell v. Falmouth Boat Construction Co Ltd.* [2], Lord Simonds-observed after referring to the observations of Denning, L.J. :

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government Officer however high or low in the hierarchy.....The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion, the answer is clearly : No."

19. With respect to the alternative remedy, their Lordships of the Supreme Court made the following observations in the aforesaid case :

Mr. Gokhale appearing on behalf of the Municipality urged that the petition filed by the Company apparently raised questions of fact which in the view of the High Court could not appropriately be tried in the exercise of the extra-ordinary jurisdiction under Article 226. But the High Court has not said so, and on a review of the averments made in the petition this argument cannot be sustained. Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a Civil suit against a public body. The questions of fact raised by the petitioner in this case are elementary.

20. In view of the urgency of the matter, we think this to be eminently a fit case where the prerogative powers ought to be exercised in the present case.

Otherwise, the entire contract would stand frustrated on account of delay.

21. The learned Advocate General, however, urged that this Court could not exercise prerogative powers for the enforcement of contractual obligations and that such powers could only be exercised either for enforcement of fundamental rights or for enforcement of statutory rights. In this connection he invited attention to the pronouncement of their Lordships of the Supreme Court in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , to the following effect:-

"In our opinion, the order of the Deputy Custodian removing the appellant from the management of the business is not vitiated by any illegality. But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a Writ in the nature of Mandamus under Art. 226 of the Constitution. The reason is that a Writ of Mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction.

22. There can be no doubt that prerogative powers cannot be used solely for the purpose of enforcing the contractual rights or obligations. But necessarily the enforcement is for enforcing the fundamental rights or statutory rights. In the present case we may observe that the rights and liabilities, although originating in a contract, are not purely contractual but they are partly contractual and partly statutory. In this behalf we may advert to the fact that the Legislature intervened by enactment of the Ordinance No. 13 of 1971, in the matter of fixing the minimum prices for the year 1972. Similarly, in the matter of liability for sales-tax, the Legislature intervened by enactment of the Madhya Pradesh General Sales Tax (Amendment and Validation Act, No. 13 of 1971. Had it been a question arising out of purely a contractual obligation, we would have been disinclined to issue a Writ and in that event, we would have been inclined to leave the parties to enforce their rights by resort to the ordinary remedies available under the law. But, in our opinion, the rights and obligations are partly contractual and partly statutory in the present case, especially in view of the fact that a State monopoly has been created in favour of the first respondent in respect of disposal of Tendu leaves. It is true that in *Rashbihari Panda etc. Vs. State of Orissa*, , the position was more or less similar as in the present case. But the petitioner *Rasbihari Panda* rested his case on violation of fundamental rights. Their Lordships negatived those contentions and in view of the fact that during the pendency of the proceedings the entire year for which the contracts were given expired and moreover the parties to those contracts were not before the Court, their Lordships held that the petitioner in that case could not be given any relief and the contracts could not be declared unlawful. But, we have no

doubt that the High Court can exercise the prerogative powers in respect of matters arising partly out of contracts and partly out of statutes.

23. Further the learned Advocate General urged that the order in the present case would be more or less administrative in nature and that the petitioner could not be granted any relief. In this connection we might observe that even the administrative orders in cases where an appeal is provided for would partake the nature of quasi-judicial orders, as laid down by their Lordships of the Supreme Court in *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, . In that event their Lordships laid down that the orders being quasi judicial ought to be speaking ones and administrative orders which affect the rights of citizens and which are subject to statutory appeals would be quasi-judicial orders. Of course, it is not necessary for us to enter into a controversy in the present case whether the order in question terminating the petitioner's contract and in refusing to renew the contract for the year 1972, would be an administrative order or a quasi judicial order. In this connection we might advert to the pronouncement of their Lordships of the Supreme Court in *Tirunelveli Motor Bus Service Co. Vs. Commissioner of Income Tax, Madras*, In that case the High Court had refused to issue an ad-interim Writ restraining the respondent State from recovering the licence-fee for which no liquor was supplied. Their Lordships of the Supreme Court made the following observations :-

"The appellant who is a licensee of a liquor shop applied to the High Court of Madhya Pradesh for a Writ of Mandamus directing the excise department of State not to recover licence fee for those days in respect of which liquor was not supplied to the appellant. The High Court summarily rejected the petition observing that the supply of liquor to the appellant was under a contract to the Government and "if the Government had committed a breach of the contract the remedy is elsewhere". It cannot without further investigation, be said that the rights and obligations arising under a licence issued under a statutory authority are purely contractual. In our judgment the High Court was in error in summarily rejecting the petition."

Their Lordships, therefore, contemplated a case where the rights and liabilities may be partly contractual and partly statutory. The present case is one of that type and the rights and liabilities cannot be said to be purely contractual. Therefore, we are of the view that we can exercise prerogative powers in the present case and the contention of the learned Advocate General cannot, therefore, be accepted as valid, and the view as expressed by a Division Bench of this Court in *M/s United Excise, Ujjain Vs. State of Madhya Pradesh* and another, cannot be said to be the correct law in view of the specific pronouncement of their Lordships of the Supreme Court in *Ram Chandra Rai v. State of M.P.* (supra).

24. As a result of the discussion aforesaid, we do not think that any case is made out for a reappraisal of the view of the Division Bench in *Haranamdas Jaidayal v. State of M.P. and others* (supra). We would affirm the view taken in that case, although the position is subsequently changed on account of two Legislative

enactments, namely, the M.P. General Sales Tax (Amendment and Validation) Act No. 13 of 1971, and the M.P. Ordinance No. 2 of 1972. This is not to say that the Legislative enactments are not to be given effect to. However the Legislative enactments having the limited operation in some respects, will have to be given effect to and it is only in view of the rights and obligations as altered by the said Legislative enactments that the petitioner can claim the relief of renewal for the year 1972. Of course, it is not for us to grant any renewal or to inquire into the disputed question regarding breach of the terms of the contract. But ex facie there being no other breach alleged except the non-payment of sales-tax, the petitioner, in our opinion, would be entitled to a renewal for the year 1972 on the terms and conditions of the contract as modified by the two Legislative enactments, namely, the M.P. Ordinance No. 2 of 1972 and the M.P. General Sales Tax (Amendment and Validation) Act No. 13 of 1971. Therefore, we hold that the petitioner is entitled to renewal of the contract for the year 1972 on the rates as mentioned in the Ordinance No. 2 of 1972. Accordingly, we issue a writ of Mandamus directing the first respondent to renew the contract in favour of the petitioner for the year 1972.

25. Consequently, this petition succeeds and is accordingly allowed. There shall, however, be no order as to costs. The security amount deposited by the petitioner be refunded to it.

OPINION

Singh, J.

26. The petitioner Chandrakant Kalidas Patel is the proprietor of the concern, M/S Shree Ganesh Trading Company, which carries on business of purchase and sale of tendu leaves in the State of Madhya Pradesh. The petitioner entered into an agreement with the State for the purchase of tendu leaves for the year 1970. The agreement was renewed for the year 1971, but the State Government have not renewed the same for the year 1972. By this petition the petitioner seeks a writ of mandamus directing the Government to renew the petitioner's agreement for the year 1972 and to restrain them from disposing of tendu leaves in the area covered by his agreement to any other person.

27. By the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhini-yam, 1964, hereinafter referred to as the Act, State monopoly was created in the trade of tendu leaves in public interest. The scheme of the Act is that the State has the exclusive right to purchase tendu leaves from the growers. The purchase is made through agents or officers of the Government. The growers are paid prices according to rates which are fixed annually u/s 7 in consultation with an advisory committee constituted u/s 6 of the Act. Section 12 of the Act provides that tendu leaves purchased by the Government or by their officers or agents shall be sold or otherwise disposed of in such manner as the Government may direct. Rules called "Niyamawali" were first made under the Act in 1965. The rules inter alia made provision for regulating sale and disposal of tendu leaves purchased by the

Government or their officers or agents. These rules were later repealed and replaced by another set of rules made in 1966. The rules of 1966 do not make any provision for regulating the disposal of tendu leaves purchased by the Government or their officers or agents. The manner of disposal of tendu leaves is thus left to the discretion of the Government u/s 12 of the Act. Apart from tendu leaves that the Government purchase from the growers, they also collect tendu leaves from trees that grow on State owned land. The collection and disposal of leaves from trees growing on Government land are not regulated by the Act or the Rules.

28. On November 27, 1969, the Government issued a notification inviting tenders from persons or parties desirous of purchasing tendu leaves, purchased or likely to be purchased, collected or likely to be collected by the Government or by their officers or agents, in the various tendu patta units of the State. The State is divided into eleven circles and each circle is divided into a number of units. By this notification, tenders were invited for the period ending 31st December 1970; i.e. for the year 1970. The tenderer was invited to offer a purchase rate per standard bag, on acceptance of which he was required under clause 17 of the tender notice to execute an agreement in the form annexed. Provision for renewal of the purchaser's agreement was made in clause 25 of the tender notice which runs as follows :

"25.(1) Unless earlier determined under the terms of the Agreement, there will be yearly renewal of Agreement by 31st October each year by issue of an order by Government in writing. Maximum period for renewal will be up to 31st December 1972, provided the accepted rate offered for the unit for 1970 season year is more than the rate to be decided by the Government for each Circle and Government are satisfied that purchaser has fulfilled the following conditions each year and has submitted the application for renewal before the 15th September :-

(a) The purchaser has done satisfactory pruning in the previous year as a result of which the quantity of leaves collected during the year has exceeded by 5 percent or more over the quantity notified and also 5 percent or moreover the quantity collected in the unit during the preceding year.

(b) There was no serious breach of the Act and Rules made thereunder and the Agreement,

(c) The purchaser had paid all dues including penalty, fine, etc., promptly and in accordance with the provisions of the Agreement.

(2). (i) The application for renewal will be submitted to the Conservator of Forests, Tendu Leaves Circle, M.P. Bhopal and copies of the same will be submitted to the Conservator of Forests and Divisional Forest Officer, in whose jurisdiction the unit is situated in the form as appended to this notice. The form can be obtained from any of the Divisional Forest Officers, on payment of Rs. 25.00 for each form.

(ii) There shall be separate application for each unit.

(3) Purchase rate per standard bag applicable for every renewed year shall be the rate calculated by increasing the purchase rate applicable to the preceding year by 5 percent and adding to it the total increase in rates of all the following items during the renewal year as compared to rates fixed for the same items in the preceding year :-

(i) purchase rate payable to growers (subject to the limit of Rs. Twenty per standard bag).

(ii) remuneration payable to Agent.

(iii) handling charges payable to Agent.

(4) The purchaser who has submitted an application for the renewal of the purchaser's agreement for the unit shall be bound by his offer if any by the terms and conditions of the Agreement till orders of the Government accepting or rejecting his offer are passed. Breach of this condition shall entail forfeiture of security deposit and Government may also black-list the purchaser for a period not exceeding 3 years. In addition the purchaser who has withdrawn his offer shall bear the loss, if any, suffered by the Government in the subsequent disposal of that unit and this loss, unless paid within 15 days from the date of issue of notice of demand, shall be recoverable from him as arrears of land revenue. For calculation of loss, the following formula will be used :

Amount of loss (in Rs.)- (The rate, offered this year by the purchaser increased by 5 percent Purchaser rate obtained in subsequent disposal) X Number of standard bags notified for that unit.

(5) The purchaser shall, execute the fresh Agreement within 15 days from the date of issue of the order granting renewal, after completing all formalities required under conditions of Tender Notice for executing Agreement, failing which the Agreement shall be liable to be terminated by Government and all consequences of termination given in the Agreement shall be binding applicable. Loss to Government, if any, in subsequent sale of leaves in the unit shall be recoverable from the previous purchaser."

The Form of purchaser's agreement also contained a renewal clause which is clause 2 and which reads:

"2. This agreement shall commence from and shall remain in force upto.....unless earlier determined under the terms hereinafter appearing :

Provided that-

(1) Unless earlier determined under the terms of the Agreement, there will be yearly renewal of agreement by 31st October each year by issue of an order by Government in writing. Maximum period for renewal will be upto 31st December 1972 Provided that the rate of this year is more than the rate decided by the

Government for each Circle and Government are satisfied that Purchaser has fulfilled the following conditions each year and has submitted the application for renewal before 15th September-

(a) The purchaser has done satisfactory pruning in the previous year as a result of which the quantity of leaves collected during the year has exceeded by 5% or more over the quantity notified and also 5% or more the over due quantity collected during the preceding year.

(b) There was no serious breach of the Act and rules made thereunder and the Agreement.

(c) The purchaser had paid all dues including penalty, fine, etc promptly in accordance with the provisions of the Agreement."

(Rest of the clause is identical with clause 25 of the Tender Notice).

29. The petitioner in his tender offered the rate of Rs. 49.51 per standard bag. The petitioner's tender was accepted and he executed a purchaser's agreement in the form prescribed.

30. The Government on July 7, 1970, notified the rates for renewal for the year 1971. This notification is as follows :

"Bhopal, the 7th July 1970."

"No. 5686-X-70.- Under condition No. 25(1) of the Tender Notice No. 8004-X-69, dated, the 26th November, 1969, published for disposal of Tendu leaves, the State Government hereby fix the following rates for each circle of disposed-off Tendu leaves units of 1970 for renewal during the year 1971. Accordingly all the purchasers appointed through Tenders, Auctions and Negotiations for the disposed of Tendu leaves units of 1970, shall be eligible to submit the applications for renewal:

A.C. Sen, Dy. Secy."

The petitioner's unit fell in item 3 of the above notification for which the rate of Rs. 45 per standard bag was notified. As the rate of the petitioner for the year 1970 was above the rate notified by the Government, an order of renewal was passed in favour of the petitioner. The petitioner executed, as required by sub-clause (5), of the renewal clause, another agreement for the year 1971 which also contained a clause for renewal in terms already quoted.

On September 8, 1971, the Government notified the rates for the renewal of purchaser's agreement for the year 1972. This notification reads as follows:--

The petitioner's unit fell in item No. 3, the rate for which was fixed at Rs. 54.99 per standard bag. As the rate mentioned in the petitioner's agreement for the year 1971 was less than the rate notified by the Government, the petitioner's agreement was not renewed.

31. The petitioner, on November 5, 1971, filed the present writ petition praying, as already stated, for a writ of mandamus directing the Government to renew the agreement for the year 1972.

32. The contention of the petitioner is that after the notification of July 7, 1970, fixing the rates for renewal, he became entitled to renewal till the year 1972, as the rate notified by the Government in the said notification was below the rate in the agreement and that the Government had no power, either under clause 25 of the tender notice or under clause 2 of the agreement, to notify afresh rates for renewal for the year 1972. It has further been averred by the petitioner that he has complied with all other conditions mentioned in clause 25 of the tender notice and clause 2 of the agreement which are necessary for obtaining renewal.

33. The contention of the State Government in reply is that the Government have power to notify rates for renewal every year and that right of renewal for the year 1972 did not accrue simply because the rate notified for the year 1971 was less than the rate contained in the agreement for the year 1970. It is also contended that the petitioner committed breaches of the agreement in that he did not do satisfactory pruning and did not pay sales-tax which he was liable to pay along with the price to the Government. It is stated that on account of these breaches, the agreement has been terminated from December 31, 1971 and there is no question of its renewal. It is further contended that the disposal of Tendu leaves being not regulated by the Act or the rules and the right of renewal being purely contractual, the petitioner is not entitled to issuance of a writ in the nature of mandamus.

34. A similar petition was filed by one Harnamdas Jaydayal v. State of M.P. and others Misc. Petition No. 562 of 1971; decided on the 9th Nov. 1971. It was held by the learned Judge that the right of renewal till the year 1972 accrued with the issue of the first notification on July 7, 1970, and the Government had no power under the renewal clause to fix fresh rates for renewal for the year 1972. It was further held that a writ in the nature of mandamus could be issued to command the Government to renew the agreement for the year 1972.

35. On January 18, 1972, the Governor of Madhya Pradesh promulgated the Madhya Pradesh Tendu Patton Ke Nirvartan Hetu Nyuntam Dar Nish-chayan Adhyadesh, 1972 (Ordinance No. 2 of 1972). Section 3 of the Ordinance reads thus:

"3. Notwithstanding anything contained in any Purchaser's agreement or tender notice relating to fixation of purchase price of tendu leaves on renewal of Purchaser's agreement for the calendar year, 1972 or any judgment, decree or order of any Court to the contrary, the minimum rates of disposal of Tendu leaves in respect of all the purchasers appointed through Purchaser's agreement for the disposal of Tendu leaves unit of 1970 and 1971, and entitled to renewal of the Purchaser's agreement for the calendar year 1972 shall be and shall always be as specified in the Table appended hereto and it is hereby enacted that the

renewal of any Purchaser's agreement for the calendar year, 1972 shall be subject to the said minimum rates and they shall be applicable to the purchasers entitled to purchase Tendu leaves by virtue of renewal clause of Purchaser's agreement of the calendar year 1971 with effect from the 1st January 1972 as if the provisions herein contained have been in force at all material times and formed likewise part of at all times of the tender notice and the Purchaser's agreement."

36. When the present petition came up before another Division Bench, it was referred to a full Bench. This is how this petition comes up before us.

37. On the arguments addressed by the Learned Counsel for the petitioner and the learned Advocate General, the following four points arise for our decision:

(1) Can a writ of mandamus be issued to compel renewal of an agreement when the right of renewal is purely contractual ?

(2) Whether the right of renewal for the year 1972 depended upon the rate first notified by the Government on July 7, 1970, or whether the Government could notify afresh the rates for renewal for the year 1972 as was done by them by issuing another notification on September 8, 1971?

(3) What is the effect of the Ordinance on the question of renewal ?

(4) Did the petitioner commit breaches of the agreement and whether his agreement was lawfully cancelled and what is its effect on the question of renewal ?

Point No 1:

38. The learned Advocate General argued at the outset that a writ in the nature of mandamus cannot be issued for enforcing contractual obligations as distinguished from other legal obligations, for obligations under a contract are created by the parties and not by the law.

39. It is a misconception to say that obligations arising under a contract are created by the parties and not by the law. Parties merely settle the terms of a contract; but the obligation to carry out the terms arises from section 37 of the Indian Contract Act, 1872, which enacts that parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any law operates on certain facts. Once the relevant facts come into existence, the relevant law operates upon them to create rights and obligations. Similar is the position in case of contract Parties create the relevant facts by entering into an agreement, but the rights and obligations pertaining to the agreement come into being by operation of the contract Act on the agreement. The distinction is lucidly brought out by Hohfeld in "Fundamental Legal Conceptions" (Yale University Paper bound edition 1964, p. 31) where he cites the following opinion of Harris, J., in *Aycock v. Martin* (1867) 37 Ca 124, 126 & 143:

"The obligation then is not the contract, is not in the contract, nor does it constitute any one of its terms nor is it equivalent to all the terms united.....when the contract is made, the existing, binding law, whatever it may be, being the obligation on promisor to perform his undertaking eo instanti attaches.....The terms of the contract are made alone by the parties to the agreement.

The obligation is the creature of law,.....is the law existing when the contract is made, binding to the performance of the promise, and is furnished solely by society".

Another opinion cited by Hohfeld is that of Hand, J, in *Hotohkiss v. National City Bank* (1911) 200 Fed 287 which is as follows :

"A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent known intent"

40. Although an obligation arising under a contract is also an obligation created by law, it is ordinarily not enforced by a writ of mandamus. See *C.K. Achutan v. State of Kerala* AIR 1950 SC 490 ; *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, ; *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, ; *United Collieries Ltd. and Another Vs. Engineer in Chief, South Eastern Rly. and Others*, ; *Untied Excise, Ujjain v. State of M.P.* 1963 JIJ 626 : 1968 MPLJ 657. For cases of other High Courts see Seerval's Constitutional Law of India, P. 664. The real reason why a contractual obligation is not ordinarily enforced by mandamus is not that it is not an obligation arising under law, but that a contract normally creates a private right and imposes no public duty, and a remedy by a suit for claiming damages or specific performance is open to a party. But where a contractual obligation is accompanied with public duty or public interest and where there is no other adequate alternative remedy, I find no reason or authority why the same cannot be enforced by mandamus. 1

41. Under English law the Crown or Crown Servants were not amenable to mandamus as the Sovereign could not be compelled to perform any duty and the remedy lay by petition of right. Only Government officials who were constituted agents for carrying out particular duties in relation to subjects so as to place them under a legal obligation towards the subjects were amenable to mandamus for enforcement of the duties See Halsbury's Laws of England, 3rd edition, Vol II, pp. 98, 99. In this background, it is not possible to notice an English case where contractual obligation may have been enforced against the Crown or its servants. Mandamus is, however, also available against a Corporation and in *N.V. Bristol v. Exeter Rail Company* (1845) 3 Ry, & Can Cas 777 it was granted to compel a Corporation to pay a sum of money under an agreement which was in settlement of a claim for damages, when the agreement was not under seal and could not be enforced by an action; See Halsbury's Laws of England, Vol. II, 3rd edition, P. 86 text and footnote (5). In *Ex parte Sir Charles James Napier* 118 ER

261 a mandamus was claimed against the East India Company which was refused as no legal right was established, but in dealing with the question of the nature of the right which entitles a person to claim mandamus, Lord Campbell, C.J. said :

"The existence of a legal right or obligation is the foundation of every writ of mandamus.....A legal obligation which is the proper substratum of a mandamus can only arise from common law, from statute or from contract."

42. In the United States "it is generally held that where a Municipal Corporation or other public body has legally contracted for certain work to be done and to be paid for in a certain specified way, it may, on the completion of the work, be compelled by mandamus to carry out the stipulations where there is no other remedy; [55 Corpus Juris Secundum, P. 318], In the same volume the following statement of law occurs at P. 98 :

"The mere fact, however, that the obligation sought to be enforced is in some respects an obligation under a contract does not render mandamus unavailable, as it is well settled that a contract may create a relation on which the law will impose rights and duties enforceable by mandamus, and where this duty imposed by contract is also one which is imposed by a public office, trust or station, it may be enforced by mandamus in the absence of any other adequate remedy."

In *State of West Virginia Ex. Rel Klosterneyer v. Charleston* 175 ALR 637, the West Virginia Supreme Court of Appeals at P. 643 stated as follow :

"The general authorities are to the effect that where required to enforce performance of a contract in which there is a public interest.....a city council may be subjected to mandamus.""

43. Our Constitution in Article 226 confers an express power on the High Courts "to issue to any person or authority, including in appropriate cases any Government, directions, orders or writs, including writs, in the nature of Habeas Corpus, mandamus, prohibition quo warranto and certiorari or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose." Construing this Article the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, observed that the power conferred is "very wide" and in view of the express provision in the Constitution it was not necessary to look back to the early history or procedural technicalities of the writs in English Law nor to feel oppressed by any difference or change of opinion expressed by English Judges, and that we can make an order or issue a writ in all appropriate cases and in appropriate manner so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law. *Basappa's* case was a case of certiorari, but observations made therein were approved in *Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore State Transport Authority, Bangalore and Others*, which was a case of mandamus. In *P.J. Irani Vs. The State of Madras*, again it was held that the power of the High

Court is not limited to issuing writ falling under particular groupings, such as certiorari, mandamus etc as these have been understood in England, but the power is general to issue any direction to the authorities. Same view was taken in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, where it was held that the power of the High Court under Article 226 cannot be equated to that of the English Courts to issue prerogative writs and the High Courts have wider powers and can mould the relief to meet the peculiar and complicated requirements of this country.

44. In the *D.F.O. South Kheri and others v. Ram Sanahi Singh* 1970 6 (SC) 290, the facts of which cannot very clearly be made out from the report whether the order challenged was passed under the terms of the contract or in the exercise of some statutory power the Supreme Court observed.

"We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action he must resort to a suit and not to a petition by way of writ."

And, in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, where a representation and promise made in an Export Promotion Scheme were enforced under Article 226, although there was no formal contract executed under Article 229, their Lordships observed:

"Even though the case does not fall within the terms of section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution." (p. 727)

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen." (p. 728)

The case of *Union of India v, Anglo Afghan Agencies (supra)* was cited with approval in *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, where a writ petition was admitted to consider enforcibility of a representation or promise made by a Municipal Corporation to traders on the question of grant of exemption from octroi duty.

45. Now, when a representation or promise which does not amount to a binding contract can be allowed to be enforced against the State or a Corporation under Article 226, I find no difficulty in holding that an obligation arising under a binding contract (which stands at a higher footing than a mere representation or

promise) can be enforced under Article 226 by issue of a writ in the nature of mandamus in appropriate cases. By "appropriate cases," I mean those cases where the obligation sought to be enforced is associated with public duty or public interest and there is no adequate alternate remedy for its enforcement and justice of the case requires that it should be enforced. This conclusion will also be in consonance with the original purpose of the writ which was "invented for the purpose of supplying defects of justice." By Magna Carta the Crown was bound neither to deny justice to anybody, nor to delay anybody in obtaining justice and therefore, if there was no other means of obtaining justice, the writ of mandamus was granted to enable justice to be done; See R.V. Commissioners of Inland Revenue Re. M. Nathan (1884) 12 QBD 461 p. 478 Bowen L.J.). In the conclusion formulated by me I have left out of account cases in which the manner of entering into a contract and its terms are statutorily regulated, for in those cases interference is more readily made; See The State of Assam Vs. Keeshab Prasad Singh and Another, , K.N. Guruswamy Vs. The State of Mysore and Others, and State of Rajasthan Vs. Hari Shankar Rajendra Pal,

The learned Advocate General submitted that a contract for purchase of movable property cannot be specifically enforced by a suit and, therefore, that relief cannot be granted under Article 226. This argument is not valid for two reasons. First, that it overlooks that subject to Chapter II of the Specific Relief Act, 1877, section 58 of the Sale of Goods Act enables a decree for specific performance to be passed in case of contracts for sale of movables, and secondly, that the power under Article 226 is not controlled by the Specific Relief Act.

46. Now, let us apply these principles to the instant case. The trade in Tendu leaves is a State monopoly under the Act. To work out the power conferred u/s 12 of the Act for sale of Tendu leaves, the Government in the year 1969 formulated the scheme of sale of leaves for whole of the State as contained in the tender notice. The tender notice and the agreements entered into with the purchasers contained representation and binding promise that if the conditions mentioned in the renewal clause are satisfied, there will be yearly renewal of the agreement upto 31st December 1972. The agreements were entered into not with one person but with a large number of persons who were purchasers in different units of the State. In these circumstances, if the agreements are not renewed by the Government on a wrong and arbitrary construction of the renewal clause, the resulting large scale avoidance of agreements made with the purchasers who constitute a section of the public gets associated with public interest. In this back-ground there arises a public duty to renew the agreements if the relevant conditions are fulfilled. The remedy by a suit for specific performance u/s 58 of the sale of goods Act which requires a notice and has to go through the normal tardy procedure will not be appropriate for the Tendu patta season begins in April and ends in June. The delay may have the effect of ruining the petitioner in business and it would be a poor consolation to the petitioner if he is told that he can close down his business and sue for damages. Having regard to all these considerations, I have no hesitation in holding that if

the petitioner has been able to establish that renewal of his agreement is being, arbitrarily refused on a wrong construction of the renewal clause, a writ in the nature of mandamus can be issued compelling renewal.

Point No 2

47. The second point is whether the Government had no authority to notify rates for renewal for the year 1972 and the petitioner is entitled to have his agreement renewed for 1972 irrespective of whether the rate in the agreement for the year 1971 was not higher than the rate decided by the Government in the notification of September 8, 1971.

48. The answer depends upon the proper construction of the renewal clause, that is clause 25 of the Tender notice and clause 2 of the agreement which are almost identically worded. A perusal of these provisions makes it clear that the renewal was to be yearly renewal. It is also clear that the renewal depended upon the fulfilment of the conditions mentioned in the proviso contained in clause 25(1) of the Tender notice and clause 2(1) of the agreement. It is also not in dispute, and it is plain, that the purchaser had to satisfy for renewal each year that the conditions mentioned in sub-clauses (a), (b) and (c) of these clauses were complied with. It is further clear that the right of renewal could only accrue if the rate offered or mentioned in the agreement was more than the rate which was decided by the Government. The only point of controversy is, whether the Government could decide the rate for renewal each year or the rate could be decided only once.

49. I have already said that the language in clause 25 of the Tender notice and clause 2 of the agreement is almost identical. The only difference is that the words in clause 25(1) "the accepted rate offered for the unit for 1970 season" are replaced in clause 2(1) of the agreement by the words "the rate of this year." Another difference is that the words in clause 25 (1) "the rate to be decided by the Government" are substituted by the words "the rate decided by the Government" in clause 2(1) of the agreement. In my opinion, the change in phraseology in the two provisions is not material and does not give rise to any change in meaning. The rate offered by the tenderer after he executes the agreement becomes "the rate of this year." Similarly, the expressions "the rate to be decided" and "the rate decided by the Government" in the context mean the same thing, because the rate for renewal was admittedly decided by the Government after the agreement and no such rate was fixed either at the time of the tender or at the time when the agreement was executed by the petitioner. It has to be noted that the Tendu patta season is from April to June and the first notification in this case fixing the rate was issued on July 7, 1970, when the season for the year 1970 had already expired.

50 Before dealing with the question further, it would be better to quote the relevant words of the proviso in clause 25(1) of the Tender notice and clause 2 (1) of the agreement:

Clause 25 (1)-"Provided that the accepted rate offered for the unit for 1970 season year is more than the rate to be decided by the Government for each circle and the Government are satisfied that the purchaser has fulfilled the following conditions each year."

Clause 2 (1)-"Provided that the rate of this year is more than the rate decided by the Government for each circle and the Govern-ment are satisfied that purchaser has fulfilled the following conditions each year."

51. If the words "each year" occurring at the end in the proviso can also be read after the words "rates decided by the Government for each circle" the construction would be that the Government had the power to issue notification fixing rates for each year. But if the words "each year" cannot be so read, the inference may be that the Government's authority to issue such a notification was limited to issuance of one notification. The rule of grammatical construction that relative and qualifying words, phrases and clauses are applied to the antecedent immediately preceding is subordinate to context and general sense of the document. Further, where several words are followed by a general expression which is as much applicable to the first and other words as to the last that expression is not limited to the last but applies to all; See for example, *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, . *The State of Bombay Vs. R.M.D. Chamarbaugwala*, ; and *The Cantonment Board, Ambala Vs. Pyarelal*, In my opinion having regard to the considerations which I shall hereinafter mention, the words "each year" should also be read after the words decided by the Government for each circle.

52. The first point to be taken notice of is that the renewal is yearly renewal and all the conditions which have to be satisfied for purposes of renewal are contained in the same proviso. These conditions are conditions for yearly renewal and in this context it is reasonable to conclude that the condition that the rate in the agreement should be more than the rate decided by the Government was intended to be fulfilled for each renewal. This suggests that the decision of the Government fixing the rates contemplated by the proviso is for fixation of rates for each year of renewal.

53. The next point material in this respect is that the purchaser after renewal was to enter into a fresh agreement containing clause 2. Indeed, when the agreement was renewed in 1971, the petitioner did enter into a fresh agreement which also contained clause 2 with the words "provided that the rate of this year is more than the rate decided by the Government" There was no point in entering into such an agreement unless it was intended that the Government would be fixing rates for renewal for the year 1972. Learned Counsel for the petitioner argued that these words in the agreement, which the petitioner executed after renewal in 1971, should be altogether ignored. In my opinion, it is not possible to accede to this argument. The execution of a fresh agreement was in terms contemplated by clause 25(5) of the Tender notice and every tenderer had notice

that for each renewed year he will have to execute a fresh agreement in the form prescribed.

54. Another important consideration in construing the renewal clause is that such a clause tends to create a monopoly for the years 1971 and 1972 in favour of persons who were purchasers in 1970 to the exclusion of others interested in the trade who may even be prepared to offer higher prices, The scheme of disposal of Tendu leaves must be viewed in the back-ground of section 12 of the Act and its object and policy. The object of the Act is to create State monopoly; but the State has no power to sacrifice public interest to benefit third parties or to create monopoly in their favour. Creation of a right of renewal in favour of existing purchasers irrespective of prevailing price of Tendu leaves would be creating a monopoly in their favour and will not be in public interest. Such a scheme will be against the policy of the Act and may be in excess of the power of disposal conferred u/s 12. Therefore, the renewal clause may itself be open to objection, but as its validity has not been challenged, that question does not arise. Still, on the above consideration, in case of doubt, it must be construed against the purchaser and that construction should be preferred which advances public interest. From this point of view the construction advanced by the State that the rate for renewal could be fixed for each year gains support. In fixing rates for renewal the Government are expected to have regard to the prevailing rate of Tendu leaves and it is only when the rate mentioned in the agreement is higher than the rate notified that the purchaser gets renewal. This construction advances public interest and curbs monopoly in favour of existing purchasers.

In *Rashbihari Panda etc. Vs. State of Orissa*, the Supreme Court considered a scheme evolved by the State of Orissa of sale and disposal of Tendu leaves u/s 10 of the Orissa Kendu Leaves (Control of Trade) Act, 1961, which corresponds to section 12 of the Madhya Pradesh Act. Under the scheme the Government offered to renew the contracts of the existing purchasers if they had observed and referred all the terms and conditions to the satisfaction of the Government and had been prompt in taking delivery of leaves and making payments. Holding such a scheme to be invalid, their Lordships observed :

"Section 10 leaves the method of sale or disposal of Kendu Leaves to the Government as they think fit. The action of the Government if conceived and executed in the interest of the general public is not open to judicial scrutiny. But it is no given to the Government thereby to create a monopoly in favour of third parties from their own monopoly."

"The classification based on the circumstances that certain existing contractors had carried out their obligations in the previous year regularly and to the satisfaction of the Government is not based on any real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved i.e., effective execution of the monopoly in the public interest. Exclusion of all persons interested in the trade, who were not in the previous year licensees is *ex facie* arbitrary; it had no direct relation to the object of preventing

exploitation of pluckers and growers of Kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State."

Rasbihari's case supports the conclusion that the renewal clause in the agreement should, in case of doubt, be construed against the purchaser.

55. It was contended for the petitioner that if this construction were to be accepted, the Government could at their will defeat the right of renewal for the year 1972 by notifying a slightly higher rate than fixed in the agreement for the year 1971. There is no substance in this argument. Even if the petitioner's construction were to be adopted, the Government could by notifying a slightly higher rate in the very first year entirely defeat the right of renewal, because the choice of rates, whether once or twice on which depended the entitlement for renewal, was left with the Government. Therefore, this consideration is not at all material for negating the construction put forward by the State.

56. It was also argued that sub-clause (3) of the renewal clause itself contained the mode of quantification of the rates at which renewal was contemplated and it was, therefore, not intended that the Government could notify rates for renewal each year. This argument again overlooks that even on the petitioner's construction the Government could at least for the first year of renewal notify rates in spite of sub-clause (3). Therefore, if this sub-clause was not to be an impediment for the Government to notify rates for the first year of renewal, it could not also come in the way of the Government to notify rates for the second year of renewal. Sub-clause (3) of the renewal clause comes into play after the purchaser has become entitled to renewal under sub-clause (1) and it has no bearing on the construction of sub-clause (1).

57. In my opinion, on a proper construction of the renewal clause the Government could notify the rates for renewal for the year 1972 and the notification of September 8, 1971, was valid. As the rate in the petitioner's agreement for the year 1971 was less than the rate mentioned in this notification, he cannot be held to be entitled to renewal for the year 1972.

Point No. 3:

58. On the question as to what is the effect of the Ordinance, the argument of the Learned Counsel for the petitioner is that on a proper construction of section 3 of the Ordinance the petitioner is entitled to renewal on the rates mentioned in the table appended to it if the conditions mentioned in sub-clauses (a), (b) and (c) of the renewal clause are satisfied irrespective whether the rate of the year 1971 in his agreement was not above the rate notified by the Government on September 8, 1971. On the other hand, the argument of the learned Advocate General is that the ordinance has the effect of fixing the minimum rates on which the renewal can be granted, but for obtaining renewal the purchaser has to show that all the conditions mentioned in the renewal clause, including the condition that the rate for the year 1971 was higher than the rate notified by the

Government on September 8, 1971 are satisfied in his case.

59. I have already quoted section 3 of the Ordinance and the Table in para 10 above. Section 2 of the Ordinance contains certain definitions. The expression "renewal of purchaser's agreement" is defined in clause (b) of section 2 to mean "renewal of purchaser's agreement in pursuance of condition No. 25 of the Tender notice and clause 2 of the purchaser's agreement." This definition has an important bearing in construing section 3 of the Ordinance. Two circumstances which also have relevance on the construction of section 3 of the Ordinance may here be mentioned. The rates mentioned in Table of the Ordinance are merely the same as the rates notified by the Government on September 8, 1971. At the time when the Ordinance was passed, the Division Bench in Harnamdas' case" had ruled that a purchaser whose contract was renewed for the year 1971 was entitled to renewal for the year 1972 if he had fulfilled the conditions mentioned in sub-clauses (a), (b) and (c) of the renewal clause irrespective of whether the rate for the year 1971 in his agreement was not higher than the rate notified on September 8, 1971, for in view of the Division Bench the rate under the renewal clause could be notified only once and that was done on July 7, 1970.

60. Section 3 of the Ordinance begins with a non-obstante clause. The proper way to construe such a section is first to ascertain the meaning of the enacting part on a fair construction of its words. The meaning of the enacting part which is so ascertained is then to be taken as over-riding anything inconsistent to that meaning in the provisions mentioned in the non obstante clause. This mode of construction was formulated by Patanjali Shastri, C.J., in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, while construing section 2 of the Supreme Court Advocates (Practising in High Courts) Act, 1951. Therein he said :

"It should first be ascertained what the enacting part of- the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment." [P. 376]

This passage was quoted with approval in *A.V. Fernandez Vs. The State of Kerala*, Applying this mode of construction, I first read the enacting part of section 3 :

"the minimum rates of disposal of Tendu leaves in respect of all the purchasers appointed through Purchaser's agreement for the disposal of Tendu leaves unit of 1970 and 1971, and entitled to renewal of the Purchaser's agreement for the calendar year 1972 shall be and shall always be as specified in the Table appended hereto and it is hereby enacted that the renewal of any Purchaser's agreement for the calendar year, 1972 shall be subject to the said minimum rates and they shall be applicable to the purchasers entitled to purchase Tendu leaves by virtue of renewal clause of Purchaser's agreement of the calendar year 1971 with effect from the 1st January 1972 as if the provisions herein contained have been in force at all material times and formed likewise part at all times of

the Tender notice and the Purchaser's agreement."

61. The section in its enacting part fixes the minimum rates at which the purchaser's agreement for the year 1972 is to be renewed. In other words, if the rate calculated in the manner provided in the agreement at which it could be renewed for the year 1972 is less than the rate mentioned in the Table of the Ordinance, the renewal will be on the Ordinance rate, but if the contract rate for renewal is higher, the contract rate will prevail. But the section applies only to the purchasers who are entitled to renewal of the purchaser's agreement for the year 1972. The words entitled to renewal of the purchaser's agreement for the calendar year 1972" and the words "to the purchasers entitled to purchase Tendu leaves by virtue of renewal clause of purchaser's agreement of the calendar year 1971" as they occur in the section make that position clear. These words are to be construed according to the definition given in section 2 (b) which, as already stated, defines the expression "renewal of purchaser's agreement" to mean "renewal of purchaser's

agreement in pursuance of condition No. 25 of the Tender notice and clause 2 of the purchaser's agreement "

62. The language used in section 3 cannot be construed to confer any right of renewal on persons who are not entitled to renewal under the renewal clause of the Tender notice or the Agreement. It is the renewal clause in the Tender notice or the Agreement that determines the class of persons who are entitled to renewal and it is to them that the section applies. The section does not aim at conferring any right of renewal, but only applies the rate mentioned in the Table as minimum rate if a purchaser is otherwise entitled to renewal of his agreement. It does not have the effect of liberalising renewal or of abrogating any condition which a person must fulfil under the renewal clause to qualify for renewal; rather it imposes an additional condition for renewal that it shall be subject to the minimum rates mentioned in the Table. Therefore, for finding out as to who are the persons entitled to renewal of the purchaser's agreement for the year 1972, one has to construe the renewal clause in the Tender notice and the agreement.

If the view taken in Harnamdas" case is the correct view, all purchasers whose agreements were renewed for the year 1971 and who had fulfilled the conditions mentioned in sub-clauses (a), (b) and (c) of the renewal clause would be entitled to renewal subject to the minimum rates fixed by the ordinance. But in the construction advanced by the State, which was rejected in Harnamdas" case, is the correct construction of the renewal clause, and in my opinion it is, a purchaser whose agreement was renewed for the year 1971 will also have to satisfy that the rate for the year 1971 was in excess of the rate declared by the Government in the notification of September 8, 1971, before he is held entitled to renewal. The enacting part of section 3 of the ordinance does not attempt to decide which of the two rival constructions of the renewal clause is correct; it operates at the stage when a purchaser has qualified himself for the year 1972 in terms of the renewal clause on its true construction, whatever that may be and

makes the renewal subject to the minimum rates contained in the table.

63. Now, let us turn to the non-obstante clause which reads :

"Notwithstanding anything contained in any purchaser's agreement or Tender notice relating to fixation of purchase price of Tendu leaves on renewal of purchaser's agreement for the calendar year 1972 or any judgment, decree or order of any Court to the contrary."

64. The words "relating to fixation of purchase price of Tendu leaves on renewal of purchaser's agreement for the calendar year 1972 "which qualify the words" any purchaser's agreement or Tender notice "make it clear that what is embraced in the non-obstante clause is not the entire purchaser's agreement or tender notice, but only that part which relates to fixation of purchase price on renewal of the agreement for the year 1972. The provision which deals with fixation of purchase price on renewal is clause 25 (3) in the Tender notice and clause 2 (3) in purchaser's agreement. These are the provisions which are embraced in the non-obstante clause and to the extent they are inconsistent with the minimum rates prescribed by the enacting clause they shall not prevail. In other words, if the purchase price for the year 1972 calculated on the basis of clause 25 (3) of the Tender notice or clause 2 (3) of the agreement (which are identical in terms) is lower than the rates fixed by the ordinance, the ordinance rate shall prevail.

"The judgment, decree or order of any Court to the contrary preferred to in the non-obstante clause is the judgment of the Division Bench in Harnamdas" case which directed the State Government to grant renewal to the petitioner of that case for the period ending 31st of December 1972 "under clause 25(3) of the Tender notice". The effect of the judgment in Harnamdas" case was to direct renewal on the rates mentioned in clause 25(3) of the Tender notice and this effect is abrogated by the enacting clause by fixing minimum rates for renewal.

65. In my opinion, neither the enacting clause nor the non-obstante clause of section 3 deal with the question as to when a purchaser becomes qualified for renewal for the year 1972 and that question has to be determined on a construction of clause 25(1) of the Tender notice and clause 2(1) of the agreement. In my opinion, it is not possible to read section 3 of the ordinance as enacting, either expressly or impliedly, that all purchasers whose agreements were renewed in 1971 and who have fulfilled conditions (a), (b) and (c) of clause 25 (1) of the Tender notice or clause 2 (1) of the agreement and who are prepared to pay the rates fixed by the ordinance shall be entitled to have their agreements renewed for the year 1972. That would be the effect if and only if, Harnamdas" case had correctly construed clause 25 (1) of the Tender notice and clause 2 (1) of the agreement.

66. It was argued by the Learned Counsel for the petitioner that if the entitlement for renewal for the year 1972 is still to be judged on the criterion whether the rates for the year 1971 in the agreement were higher than the rates decided by the Government in the notification of September 8, 1971, then the

minimum rates fixed by the ordinance will never have any application, for the rates mentioned therein and in the notification are nearly the same and the renewal for 1972 will always be on a higher rate and the ordinance will not serve any purpose. This argument overlooks that having regard to the sequence of events the ordinance was passed to ensure certain minimum revenue in the year 1972 from the sale of Tendu leaves to the existing purchasers if the view accepted in Harnamdass' case was to hold the field. This limited object is achieved even if Harnamdass' case is later over-ruled on a reconsideration by the High Court. The real point to be noticed is that the ordinance does neither declare that the construction adopted in Harnamdass' case of the renewal clause is the correct view nor does it itself attempt to give any meaning to the renewal clause. Its real effect is only to add something in the nature of a proviso to clause 25(3) of the Tender notice and clause 2 (3) of the agreement so as to ensure certain minimum rates. Even assuming that the ordinance proceeds on the assumption that the construction adopted in Harnamdass' case of the renewal clause is the correct construction, it cannot be held that the ordinance has thereby declared that construction to be the correct construction and made it a part of the law, for it is well settled that beliefs or assumption of those who frame Acts of the Legislature cannot change the law and legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so; See *I.R.C. v. Dowdell O' Mahoney & Company* (1952)1 All ER 531 (HL) p. 544, *Hariprasad v. A.D. Divelkar* AIR 1957 SC 121 , p. 131 and *Nalnikant Ambalal Mody Vs. Commissioner of Income Tax, Bombay*,

67. I am, therefore, of opinion that the petitioner in whose agreement the rate for the year 1971 was lower than the rate notified on September 8, 1971 is not entitled to renewal for the year 1972 even on the basis of the Ordinance.

Point No. 4:

68. In view of my findings on points Nos. (2) and (3), the question for consideration of this point does not arise and I express no opinion upon it.

69. For the reason that the petitioner is not entitled to renewal, I will dismiss the petition, but, in the circumstances, will make no order as to costs. The security deposit shall be refunded to the petitioner.

OPINION

Shivdayal, J.

70. I have had the benefit of perusing the orders prepared by my learned brothers, Mr. Justice Tare and Mr. Justice G.P. Singh. For different reasons which I shall presently state, I agree with Tare, J. In the conclusion that the petitioner is entitled to renewal on the rates specified in the Table appended to Ordinance No. 2 of 1972.

71. The appellant firm purchased the right to collect Tendu leaves for the year

1970 under an agreement which gave it the right of renewal on certain conditions being fulfilled. These conditions are contained in clause 25 of the Tender notice. It reads as follows :

"25. (1) Unless earlier determined under the terms of the agreement, there will be yearly renewal of Agreement by 31st October each year by issue of an order by Government in writing. Maximum period for renewal will be up to 31st December 1972, provided the accepted rate offered for the unit for 1970 season year is more than the rate to be decided by the Government for each Circle and Government are satisfied that purchaser has fulfilled the following conditions each year and has submitted the application for renewal before the 15th September:

(a) The purchaser has done satisfactory pruning in the previous year as a result of which the quantity of leaves collected during the year has exceeded by 5 percent or more or over the quantity notified and also 5 percent or more or over the quantity collected in the unit during the preceding year.

(b) There was no serious breach of the Act and rules made there under and the Agreement.

(c) The purchaser had paid all dues including penalty, fine, etc, promptly and in accordance with the provisions of the Agreement.

(2) (i) The application for renewal will be submitted to the conservator of Forests, Tendu Leaves Circle, M.P., Bhopal and copies of the same will be submitted to the Conservator of Forests and Divisional Forest Officer, in whose jurisdiction the unit

is situated in the form as appended to this notice. The Form can be obtained from any of the Divisional Forest Officers, on payment of Rs. 25 00 for each Form.

(ii) There shall be separate application for each unit,

(3) Purchase rate per standard bag applicable for every renewed year shall be the rate calculated by increasing the purchase rate applicable to the preceding year by 5 percent and adding to it the total increase in rates of all the following items during the renewed year as compared to rates fixed for the same items in the preceding year : -

(i) purchase rate payable to growers (Subject to the limit of Rs. Twenty per standard bag),

(ii) remuneration payable to Agent,

(iii) handling charges payable to Agent

(4) The purchaser who has submitted an application for the renewal of the purchaser's agreement for the unit shall be bound by his offer if any by the terms and condition of the Agreement till orders of the Government accepting or rejecting his offer are passed. Breach of this condition shall entail forfeiture of

security deposit and Government may also black list the purchaser for a period not exceeding three years. In addition the purchaser who has withdrawn his offer shall bear the loss, if any, suffered by the Government in the subsequent disposal of that unit and this loss, unless paid within 15 days from the date of issue of notice of demand, shall be recoverable from him and arrears of land revenue. For calculation of loss, the following formula will be used :

Amount of loss (in Rs). (The rate, offered this year by the purchaser increased by 5 percent Purchaser rate obtained in subsequent disposal) X number of standard bags notified for that unit.

(5) The purchaser shall, execute the fresh Agreement within 15 days from the date of issue of the order granting renewal, after completing all formalities required under conditions of Tender notice for executing Agreement, failing which the Agreement shall be liable to be terminated by Government and all consequences of termination given in the Agreement shall be binding applicable. Loss to Government, if any, in subsequent sale of leaves in the unit shall be recoverable from the previous purchaser."

It will be convenient to refer hereinafter to conditions (a) (b) and (c) of clause 25 (1) above, as "the other conditions". With the Tender notice was appended the "Purchaser's Agreement". Clause 2 of that agreement runs thus :-

"2.....

Provided that-

(1) Unless earlier determined under the terms of the Agreement, there will be yearly renewal of agreement by 31st October each year by issue of an order by Government in writing. Maximum period for renewal will be upto 31st December 1972. Provided that the rate of this year is more than the rate decided by the Government for each Circle and Government are satisfied that Purchaser has fulfilled the following conditions each year and has submitted the application for renewal before 15th September....."

72. The petitioner's tender was submitted in the year 1969 for the 1970. It was accepted. Subsequently, the State Government notified rates for the year 1971 by Notification No. 5686-X-70 dated July 7, 1970, in the following terms: -

"Under condition No. 25(1) of the Tender Notice No. 8064-X-69, dated, the 26th November, 1969 published for disposal of Tendu leaves. The State Government hereby fix the following rates for each circle of disposed-off Tendu leaves units of 1970 for renewal during the year 1971. Accordingly all the purchasers appointed through Tenders, Auctions and Negotiations for the disposed off Tendu leaves units of 1970, shall be eligible to submit the applications for renewal :-

73. There was no difficulty upto this stage and the petitioner's agreement was renewed for the year 1971. However, on September 8, 1971 the State Government issued a fresh notification prescribing for the year 1972, a rate

higher than the rate on which the petitioner had run the contract during the years 1970 and 1971 (hereinafter called the "accepted rate"). A dispute then arose. The petitioner claimed to be entitled to renewal for the year 1972 as well on the accepted rate. On the other hand, the stand taken by the State Government was that unless the accepted rate was higher than the rate notified by the State Government for the year 1972, the purchaser was not entitled to renewal for the year 1972.

74. Apart from the condition regarding rate there are other conditions enumerated in clause 25. It is not a dispute before us that if any of these other conditions was not complied with by the purchaser, he would not be entitled to renewal. The only controversy, which arises in the present petition, is whether even if the other conditions have been fulfilled, the petitioner is disentitled to renewal just because the rate notified by the State Government for the year 1972 is higher than the accepted rate for the unit in the season year 1970. The debate centres round the expressions:-

"Provided the accepted rate offered for the unit for 1970 season year is more than the rate to be decided by the Government for each circle and Government are satisfied that the purchaser has fulfilled the following conditions each year."

(Clause 25 of the Tender notice)

and

"Provided that the rate for this year is more than the rate decided by the Government for each circle."

(Clause 2 of the Purchaser's Agreement)

75. The main argument for the purchaser is that in fact the agreement was for three years. Although initially granted for one year, the purchaser was entitled to renewal for the next two years. When the Tender notices were issued in the year 1969-and they were issued for the first time rates for Tendu leaves were decided by the Government for 1970 season year, but it was intended that the Government would decide the rate subsequently. However, the expression "to be decided" envisaged only one decision, but not a decision each year. Therefore, the expression "to be decided by the Government for each circle" speaks of the rate to be decided by the Government in the year 1970. The expression "rate for this year" in clause 2 of the purchaser's Agreement is a happy and synonymous substitute for the expression "accepted rate offered for the unit for 1970 season year". In short, the rate notified by the state Government on July 7, 1970, was "the rate to be decided by the Government" within the meaning of clause 25 of the general notice, or "the rate decided by the Government" under clause 2 of the Purchaser's Agreement.

76. On the other hand, the interpretation in favour of the State Government is that under clause 25, the Government had a right to decide the rate "each year" and that to entitle a purchaser to renewal for any subsequent year, it is one of

the conditions that the rate notified by the State Government for that particular year of renewal must be less than the accepted rate on which the purchaser had run the contract for the year 1970. The expression "to be decided by the Government" necessarily means that the rate was to be decided each year, that is, for 1971 as also for 1972. If it was contemplated by clause 25 that the Government had to decide the rate only for 1971, then it would have been said in so many words. The words "each year" in clause 25 (1) govern not only the phrase "purchaser has fulfilled the following conditions" but also the phrase "the accepted rate is more than the rate to be decided by the Government for each circle." In other words, in "each year" two conditions had to be fulfilled in order that a purchaser would earn the right of renewal:- (1) The accepted rate is more than the rate to be decided by the Government each year; and (2) Government is satisfied that the purchaser has fulfilled the other conditions each year. The omission of the words "each year" in clause 2 of the Purchaser's Agreement does not make any difference because the rate "for this year" (meaning 1970) should be more than the rate decided by the Government, in which it is implicit that the rate had to be decided for the ensuing years; it cannot be the same as for the year 1970.

77. The rival contentions were earlier considered by a Division Bench of Mr. Justice Bhargava and Mr. Justice Bhawe in *Harnamdas Jaydayal v. State of M.P. and others* Misc. Petition No. 562 of 1971, decided on the 19th November 1971, where the interpretation in favour of the purchaser was accepted.

78. In view of what I am going to say presently, it has become unnecessary to enter into the question which of the two interpretations is correct and has to be preferred. On November 19, 1971, the decision of this Court in Misc. Petition No. 562 of 1971, was rendered. That decision was followed by an Ordinance (No 2 of 1972) promulgated by the Governor of Madhya Pradesh (published in the M.P. Government Gazette dated January 18, 1972). It is called the "M.P. Tendu Patton Ke Nirvatan Hetu Nyuntam Dar Nishchayan Adhyadesh, 1972." Article 3 of the Ordinance read thus :-

"Notwithstanding anything contained in any purchaser's agreement or tender notice relating to fixation of purchase price of tendu leaves on renewal of purchaser's agreement for the calendar year, 1972 or any judgment, decree or order of any Court to the contrary to minimum rates of disposal of tendu leaves in respect of all the purchasers appointed through Purchaser's agreement for the disposal of Tendu leaves unit of 1970 and 1971, and entitled to renewal of the purchaser's agreement for the calendar year 1972 shall be and shall always be as specified in the Table appended hereto and it is hereby enacted that the renewal of any Purchaser's agreement for the calendar year 1972 shall be subject to the said minimum rates and they shall be applicable to the purchasers entitled to purchase Tendu leaves by virtue of renewal clause of purchaser's agreement of the calendar year 1971 with effect from the 1st January 1972 as if the provisions herein contained have been in force at all material times and

formed like wise part at all times of the tender notice and the purchaser's agreement."

(Underlined--hire italics--by me)

79. The Ordinance gives statutory recognition to the right of renewal to a purchaser who is entitled to renewal, which means, on the fulfilment of the other conditions. Under the Ordinance, all purchasers who have complied with the "other conditions" are declared entitled to renewal "subject to the minimum rates" specified in the Table appended to the Ordinance. To put it differently, the Ordinance gives a fresh right of renewal to the purchaser Having fulfilled the other conditions, he becomes entitled to renewal; but the fresh right of renewal bestowed by the Ordinance is subject to the condition that the purchaser will have to pay the minimum rate (applicable to him) as specified in the Table appended to the Ordinance (hereinafter called the specified rate). If the accepted rate is less than the specified rate, he will have to pay the specified rate, because there could not be a renewal on a lower rate. The Ordinance does not call the rates specified in the Table as fixed rates, but "minimum rates." Now, the impact of the word "minimum" is that if the accepted rate is higher than the specified rate, then the purchaser will have to pay the accepted rate instead of the specified rate. That is the force of the word "minimum". It connotes "the least possible quantity, amount or degree which can be assigned in a given case under fixed conditions." (per Corpus Juris Secundum).

80. The non obstante clause removes every hurdle in the way of the operative part of the Ordinance It overrides clause 25 of the Tender Notice, and clause 2 of the purchaser's agreement, and also the decision of the High Court in Harnamdas's case (supra), and any other judgment, decree or order which might have been rendered by any Court to the contrary.

81. I cannot persuade myself to accept the contention of the learned Advocate General that the rates specified in the Table appended to the Ordinance merely substitute the rates which were notified on September 8, 1971. If the purpose of the Ordinance had been merely to undo the effect of the decision of this Court in Harnamdas's case (supra), it would have been quite enough for the Ordinance to say, along with the non obstante clause, that the renewal for the year 1972 will be only of those Agreements in which the accepted rates are higher than the rates notified by the Government on September 8, 1971, and to give it retrospective effect.

82. Referring to the definition of "renewal of purchaser's agreement" in sub-clause (b) of clause 2 of the Ordinance, learned Advocate General strenuously urged that for applying clause 3 of the Ordinance, a purchaser must first be entitled to renewal for the year 1972. Therefore it is condition No. 25, which will determine whether a person is entitled to renewal or not. And, to answer that question, it will have to be seen whether the accepted rate is higher than the rate specified in the Table appended to the Ordinance. The argument is that all

conditions, including the condition about rate, as required by clause 25, must be satisfied, before it can be said that a person is "entitled to renewal". On this argument, it was further contended that a purchaser whose rate for the year 1970 was less than the rate notified in the Ordinance, will be entitled to renewal, if the view taken by the Division Bench in Harnamdas's case (supra) is correct. But if that view is not correct, then the condition in clause 25 remains unsatisfied in his case so that there can be no renewal. I am unable to accept this contention.

83. The non-obstante clause in so many words supersedes clause 25 of the Tender notice and clause 2 of the purchaser's Agreement in so far as it relates to fixation of purchase price. The non obstante clause reads thus :-

"Notwithstanding anything contained in any purchaser's agreement or the tender notice relating to fixation of purchase price of Tendu leaves on renewal of purchaser's agreement for the calendar year 1972 or any judgment, decree or order of any Court to the contrary.....".

(Underlined-here italics-by me)

If the learned Advocate General was right, the non-obstante clause would have merely overridden "any judgment, decree or order of any Court to the contrary" but would not have superseded clause 25 of the Tender, notice or clause 2 of the Purchaser's Agreement relating to fixation of purchase price. It is patent enough that the effect of the non-obstante clause is to override clause 25 of the Tender Notice and clause 2 of the Purchaser's Agreement in so far as it relates to the rates. The result is that whatever may be the interpretation of clause 25 with regard to rates, the rates specified in the Ordinance must override and prevail, so that if the accepted price for the year 1971 was lower than the rate specified by the Ordinance the latter rate shall prevail. I am clearly of the opinion that the expression "purchaser entitled to renewal of the purchaser's agreement" employed in the Ordinance refers to the right of the purchaser to renewal on the fulfilment of the "other conditions", but not the condition relating to rate. The condition of rate will be governed by the Ordinance. That, in my opinion, is the only reasonable construction, because, otherwise, the Ordinance would be otiose; it would be for nobody's benefit; it would be rendered purposeless. To me, the object of the Ordinance is abundantly clear. It aims at doing away with the controversy about the two balanced interpretations of the proviso the renewal clause in the Tender notice and in....(sic) Agreement, and also the decision in Harnamdas's case (supra), (sic) simulatously; at fixing rates at which a purchaser, who has satisfied the other conditions, will be entitled to renewal. However, if the purchase rate for the year 1971 was higher, then he cannot get the benefit of the Ordinance rates. Therefore, in the view that I take, a purchaser will be entitled to renewal on the fulfilment of the following elements :-

(1) That he has complied with all other conditions of the Purchaser's Agreement; and

(2) That his accepted rate for 1971 was higher than the rate specified in the Table appended to the Ordinance;

Or

otherwise, he consents to renewal on the rate specified in the Ordinance.

Nothing else is to be seen. In the *The State of Bihar Vs. Hiralal Kejriwal and Another*, their Lordships observed that to ascertain the meaning of a section it is not permissible to omit any part of it. The whole should be read together and an attempt should be made to reconcile both the parts.

84. I find that the Ordinance is a very thoughtful measure. According to the construction approved of in *Harnamdas's* case, the purchaser was entitled to renewal on the accepted rate, which would have brought to the State less revenue than what the rates notified in September 1971 would have fetched. According to the opposite construction all purchasers whose rates were less than the September 1971 rates would have been out. The Ordinance lays down a *via media*. On the one hand, it provides, a fresh Table of rates, corresponding to the September 1971 rates, in another form, and declares that there shall be no renewal on a lower rate. On the other hand, it bestows legislative recognition to and preserves the right of renewal which the purchaser had under the Tender notice and the Purchaser's Agreement. In *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, their Lordships laid down thus :-

When a question arises as to the interpretation to be put on an enactment, what the Court, has to do is to ascertain "the intention of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. "The literal construction then", says Maxwell on Interpretation of Statutes, 10th Edn. P. 19, "has, in general, but *prima facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy."

85. The Ordinance could have completely abrogated the right of renewal. But it did not. Far from it, it gave legislative recognition to that right which had been granted in the existing Purchaser's Agreement. The learned Advocate General's argument that it may fetch better revenue if the right of renewal is taken away and there is a fresh auction, may appear attractive for a moment. But on a little reflection, it becomes quite clear that the conferral of the right of renewal, and respecting that right, would be in the interest of public revenue. Whenever renewal for further term is assured, although subject to the condition that the purchaser will conduct himself well, it serves as an incentive to the prospective purchaser. With the self-confidence that he would abide faithfully by the

conditions, he looks forward to working the contract for a longer period which is assured. This makes him offer a higher price than he would in the absence of the right of renewal. Then again, if the right of renewal granted under the purchaser's agreement for the year 1972 were taken away by the instrumentality of a legislative power, and the Ordinance had superseded the right of renewal, its long term effect would have been very much adverse to public revenue. On every subsequent auction the bidder would address himself like this "Yes, it is all right that the right of renewal will be reserved to me under the Purchaser's Agreement. But, when the time will come for me to deprive its benefit, it will be taken away by an Ordinance." This thought would defeat the whole purpose of giving the right of renewal in the Purchaser's Agreement. The incentive would be erased. That is why the right of renewal was conceded in the Ordinance. In my view, the whole purpose of the Ordinance is to concede the right of renewal, and to end the controversy which arose from the two possible interpretations of the renewal clause by fixing afresh, the rates on offering which the purchaser will be entitled to renewal. By this measure, the incentive is preserved, and, while putting an end to the controversy which arose from the two interpretations, the Ordinance gives the facility of renewal to each and every purchaser. No one can grudge such a beneficent legislative measure. It should be given effect to in letter and spirit, rather than make it the source of a new controversy. In *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, , their Lordships called it the duty of Courts to give effect to that meaning of the Act what common sense would show was obviously intended, and the construction which would defeat the ends of the Act must be rejected, even if the same words used in the same section and even the same sentence, have to be construed differently, and that the law goes so far as to require the Courts some times even to modify the grammatical and ordinary sense of the words.

86. The true effect of the Ordinance is that any purchaser who is otherwise entitled to renewal for the year 1972 (i.e. who has complied with the other conditions provided in clause 25(1) of the Tender notice) shall be granted renewal if he agrees to pay the rates specified in the Table appended to the Ordinance, or the purchase rate, whichever be higher. It may be mentioned here, for what it is worth, that renewal, as we were told, had been granted to many other purchasers on the rates specified in the Table appended to the Ordinance although their rates for the year 1971 were less than the rates specified in the Ordinance. That this is a fact as was admitted by the learned Advocate General. Two other petitions *M/s Harishbhai v. State of M.P.* and others M.P. 690 of 1971; decided on the 10th April 1972 and *M/s Lalludhai B. Patel & Co v. The State and others* M.P. 659 of 1971; decided on the 10th April 1972 which were both listed with the present petition for hearing, have been dismissed as infructuous in the statements made before us by the Learned Counsel for the petitioners that renewal had been granted to both the petitioners. This conduct of the State Government accords with the view I have taken.

87. It is to be mentioned that the petitioner has already offered by pay the rate specified in the Table appended to the Ordinance.

88. For the reasons I have stated above, I agree with my learned brother, Tare, J., in the conclusion recorded by him that the petitioner is entitled to renewal of the contract for the year 1972 on the rates mentioned in Ordinance No. 2 of 1972.

89. It was then maintained by the leaaned Advocate General that a writ of mandamus cannot be issued to compel renewal of an agreement, when the right to renewal is purely contractual. No such unqualified proposition can be accepted. A distinction must be drawn between, the jurisdiction of this Court under Article 226 of the Constitution and the discretion involved in the exercise of that jurisdiction. Nothing has been shown to us to take away the jurisdiction of this Court under Article 226 for interfering with an obligation, arising in a binding contract, by issuance of a writ in the nature of mandamus in suitable cases. It is altogether different that as a rule, a writ of mandamus is not issued to enforce contractual obligations and the parties are left to enforce them by means of a regular suit, because invariably the latter remedy is fully efficacious. But, where a right, though originating in a contract, is protected and regulated by statutory provisions, redress can be obtained under Article 226 of the Constitution for their violation by a statutory body. This is more so when recourse to a civil suit is not an equally efficacious remedy. This point is settled. In the O.F.O. South Kheri and others v. Ram Sanehi Singh, Civil Appeal No. 1635 of 1969; decided on the 15th January, 1970, their Lordship of the Supreme Court have laid down thus :

"We are unable to hold that merely because the source of the right which the respondent claims was initially in the contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy Vs. The State of Mysore and Others, , there can be no doubt that the petition was maintainable, even if the right to relief arose out of ah alleged breach of contract."

In the present case, it was urged for the petitioner that the trade in Tendu Patta being a State monopoly, if agreements are not renewed by the Government, by merely putting a wrong and arbitrary construction to the renewal clause, it amounts to refusal to perform its public duty. Moreover, a civil suit cannot be said to be an equally efficacious remedy having regard to the fact that Tendu Patta season begins in April and end in June. Two months notice u/s 80, Civil Procedure Code, will also be necessary for a suit.

90. All this apart, so far as the present case is concerned, what is to en-forced is a statutory obligation imposed by the Ordinance. That can, and must, be enforced by a writ under Article 226. An Ordinance is promulgated by the Governor in exercise of his legislative power conferred by the Constitution under Article 213. Under that Article, the Governor derives that power directly from the

Constitution and he is as much a legislative body as the Legislature itself. The power of legislation by Ordinance is as wide as the power of the Legislature of the State. The power is available to the Governor when the Assembly is not in session. After the prorogation of the legislature under Article 174 (2), there is no further curb on the legislative power of the Governor. See *State of Punjab Vs. Satya Pal Dang and Others* and *Baldev Parkash and Others*, and *N. Shrinivasan v. State* AIR 1968 Ker 158 (FB). The Governor's power of making law by Ordinance is analogous to and co-extensive with the power of the Legislature to enact laws. That power is, however, subject to the qualifications that the power springs into existence when the Legislature is not in session and there should be necessity to take immediate action. Thus whatever can be achieved through legislation by the Legislature can be achieved by an Ordinance. The Governor has the power to make an Ordinance even if it is promulgated with a view to override a judgment of the High Court under Article 226 See *State of Orissa v. Bhupendra Kumar* (1962) 2 SCR (Supp) 380, Therefore, a writ can issue to enforce the obligation of the Government under the Ordinance to grant renewal to the petitioner.

91. Furthermore, it is not correct to say that where the remedy of a suit lies, this Court cannot exercise its jurisdiction under Article 226 of the Constitution. Existence of another remedy does not affect, or oust, or operate as a bar to the jurisdiction of the Court to issue a writ under Article 226. The High Court has a discretion to grant relief under Article 226 of the Constitution even if there are other alternative statutory remedies. See for instance, *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, and *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, .

92. The rule that where an alternative remedy exists, relief under Article 226 of the Constitution will be refused is not an absolute rule but is a rule in the nature of self discipline imposed upon itself by the High Court. However, there are well recognised exceptions to this rule. One of them is that where the act complained of is not authorised by law, resort can be had to Article 226, even where the petitioner has an adequate alternative remedy. See for instance, *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, and AIR 1954 258 (Nagpur) . Another is where an alternative remedy is onerous or burden-some or not efficacious, it cannot be regarded as adequate See for instance *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, where it was observed:

"Moreover, the remedy provided by the Act is of an onerous and burden-some character. Before the appellant can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy."

Both these propositions apply to the present case. Here, time factor is significant. Therefore, I consider it a duty of this Court to issue a writ.