
(1999) 02 KL CK 0061
In the High Court Of Kerala
Case No : O.P. No's. 14467 of 1994

Issac Peter and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-02-1999

Acts Referred:

Constitution of India, 1950 — Article 254(1)
Contract Act, 1872 — Section 59

Citation : (1999) 1 KLJ 356

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : P.C. Chacko, Thomas V. Jacob, S.A. Nagendran and George Poonthottam, for the Appellant; M.K. Damodaran, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—These cases relate to payment of kist and interest for the abkari years 1980-81 and 1981-82, and for subsequent periods by various licensees of arrack shops. State is yet to realise the entire amount of kist and interest even after a lapse of several years due to various litigations before courts. Petitioners in these cases are now aggrieved by the demand of interest on the kist amount which the State could not realise due to litigations. Arguments were raised mainly on facts in O.P. No. 14467 of 1994. A few facts are necessary for proper disposal of these cases. Petitioner in O.P. No. 14467 of 1994 bid some of the shops in Sultan Battery and Kalpetta ranges in public auction for the year 1980-81 for an amount of Rs. 70,01,000/- and Rs. 50,76,000/- respectively and also a few shops in the same ranges for the year 1981-82 for Rs. 50,43,000/- and Rs. 51,11,000/- respectively. Agreements were executed by the petitioner with the excise department accepting various terms and conditions enumerated therein, in accordance with the Kerala Abkari Act and Kerala Abkari Shops (Disposal in Auction) Rules. Agreement authorises the State to receive the entire amount under the provisions of the Revenue Recovery Act

as if it is revenue due on land.

2. Petitioner and certain others later approached this Court and filed OP. Nos. 2325 and 2326 of 1981 and 2043 of 2044 of 1983, etc., demanding additional quantity of arrack from the State and also sought for a writ of mandamus restraining the excise department from collecting kist other than in proportion to the arrack actually supplied to the petitioners and also restraining them from initiating revenue recovery proceedings against the petitioners. Some of the petitioners in this batch of Writ Petitions approached the civil courts for identical reliefs. Writ Petitions filed before this Court were allowed by a Division Bench of this Court in *Issac Peter v. Asst. Excise Commissioner*, 1984 KLT 88 holding that the State was under a statutory obligation to permit issue of such quantity of arrack in excess of monthly quota as was demanded by the petitioners, and that the State having failed to fulfil the obligation was estopped from demanding full bid amount, and State was not entitled to invoke the provisions of the Revenue Recovery Act for realisation of the amount due without proper adjudication and quantification. this Court therefore quashed all revenue recovery proceedings initiated against the petitioners. Based on the decision of the Division Bench of this Court, some of the suits were decreed by the civil courts, and appeals preferred by the State also ended in dismissal.

3. State, however, preferred appeals before the Supreme Court, challenging the various judgments of this Court. Supreme Court reversed the judgments of this Court and allowed the appeals preferred by the State in the decision in *Asst. Excise Commissioner v. Issac Peter* (1994) 1 KLT 698. Supreme Court declared that the State has no legal obligation to supply additional quantity of arrack as contended by licensees. Supreme Court held that licensees are not entitled to any remission or abatement in the licence fee and other amounts payable under the contract. It was held that if the licensees offered their bids with their eyes open they cannot blame anyone else for the loss, if any, sustained by them, nor are they entitled to say that licence fee should be reduced proportionate to the actual supplies made. Supreme Court opined that these are cases of formal contract arrived at pursuant to a public auction or submission of tenders and in some cases by negotiation, and that licensees cannot wriggle out of the contractual obligations.

4. After the decision of the Supreme Court, department issued demand notices to various licensees demanding balance amount of kist as well as interest due as per the terms and conditions of contract entered into between the parties in accordance with Kerala Abkari Act and the Kerala Abkari Shops (Disposal in Auction) Rules. When agreements were executed by the petitioner in O.P. No. 14467 of 1994, and others, the rate of interest was 12% and the same was subsequently enhanced to 18% vide GO.MS. No. 49/87/TD dated 24-4-1987 with effect from 1-4-1987. Accordingly demands were made in certain cases demanding interest at the rate of 12% till 1-4-1986 and for the balance amount due at the rate of 18% on the basis of amended rules.

5. Sri. P.C. Chacko, senior counsel appearing for the petitioner in O.P. No. 14467 of 1994 centred his argument mainly against the demand of interest by the State for the period from 14-11-1983 to 22-4-1994, that is from the date of judgment of a Division Bench of this Court to the date of judgment of the Supreme Court. Counsel submitted that when the State failed to supply additional quantity of arrack, they approached this Court and this Court allowed the Writ Petitions vide judgment dated 14-11-1983, and quashed all the revenue recovery proceedings. Counsel, therefore, submitted that by virtue of the fact that the Division Bench quashed the revenue recovery notices issued by the State, petitioners cannot be termed as defaulters. Counsel submitted that while entertaining the appeals preferred by the State, Supreme Court passed the following order:

Out of entire auction amount 30% has already been deposited at which there is no dispute. As regards 20% it is directed that the same will be paid in two equal instalments, first of which will be paid within three months from today and the 2nd instalment of 10% will be paid within three months thereafter. Due credit will be given to the respondents for which has been paid in "kist" by concerned respondents. For the balance 50% amount Rule 5(11) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 will apply.

Counsel submitted in terms of the above mentioned interim order of the Supreme Court, petitioners made payment of 50% of the said amount relating to both the years. Counsel further submitted that eventhough the Supreme Court ultimately allowed the appeals filed by the State, there was no declaration as to the liability of the petitioners to pay interest between the period 14-11-1983 and 22-4-1994. Counsel also referred to the interim order passed by this Court in C.M.P. No. 25367 of 1994 by which this Court granted stay of recovery of interest. Counsel submitted by the interim order, this Court has stayed all proceedings for recovery of interest for the period from 13-11-1983 to 22-4-1994. It is therefore his contention that because of stay of recovery of interest, whatever amount petitioners had remitted can only be adjusted towards kist, and not towards interest. Counsel also made reference to the decision of this Court in *Nachimuthu v. Sales Tax Officer*, 1994 KLJ (TC) 255.

5(a). Counsel further submitted Rule 6(25) of the Auction Rules to the extent it provides that the amount remitted by a defaulter towards arrears shall be adjusted towards interest due from him in the first instance is illegal and in conflict with Sec. 59 of the Indian Contract Act. Counsel submitted any appropriation of amount towards interest will go against Sec. 59 of the Indian Contract Act. Counsel also made reference to Sec. 29(2)(r) of the Abkari Act and contended that only on certain limited matters, the power under Rule 6(25) could be invoked and that the rule making authority cannot enact any provision which will go against Sec. 59 of the Indian Contract Act. Counsel further submitted that since Rule 6(25) of the Auction Rules is in clear conflict with Sec. 59 of the Indian Contract Act, the same is ultra vires and void due to lack of assent by the President of India, in view of Art. 254(1) of the Constitution of India.

6. Counsel referred to Exts. P7 and P8 agreements and submitted that going by the agreements, payment of interest was 12% and therefore department is not justified in demanding 18% interest with effect from 1-4-1986. According to him, the amendment effected vide G.O.MS. No. 49/87/TD dated 24-7-1987 would not apply to the agreements executed in the years 1980-81 and 1981-82. Counsel contended even the demand of interest at 12% for the year 1980-81 cannot be sustained since the rate of 12% interest was effected by SRO. No. 535/80 dated 3-6-1980 published in the Kerala Gazette No. 25 dated 17-6-1980, and that the auction for the year 1980-81 was conducted as per notification published in February, 1980 stipulating conditions of auction. In the said circumstances, the amended provision could not have been given effect to for the year 1980-81.

7. Learned Advocate General advanced arguments on behalf of the State contending that licensees cannot wriggle out of contractual obligations, which they have entered into with open eyes. According to him, State is claiming interest only on the basis of the terms and conditions agreed upon by the licensees and also on the basis of Abkari Act and Auction Rules. It was contended since Supreme Court reversed the decision of the Division bench of this Court, licensees should be put in the same position as they were before the judgment of a division bench of this Court. Various interim orders passed by this Court as also by the Supreme Court would not save the petitioners from the obligation to comply with the terms and conditions of contract. Learned Advocate General relying upon the decision of the Supreme Court in *Asst. Excise Commissioner v. Issac Peter*, (1994) 1 KLT 698, which reversed the decision of this Court in *Issac Peter v. Asst. Excise Commissioner*, 1984 KLT 88, pointed out that Supreme Court has ordered that all the terms and conditions of contract being contained in the statutory rules would prevail, and the licensees are not entitled to remission or abatement in the licence fee and other amounts payable under the contract. In any view of the matter, learned Advocate General contended that State shall not be put to prejudice by various interim orders passed by this Court and the Supreme Court, while enforcing the contractual obligations, especially when Supreme Court allowed the appeals filed by the State.

8. Learned Advocate General further submitted Supreme Court has not restrained the State from recovering the interest or adjusting the amount paid towards interest by virtue of any interim orders. Interim order only says that due credit will be given to the respondents for a sum which has been paid in kist. Interim order never restrained the State from receiving amount towards interest and giving credit to the same. In any view of the matter, learned Advocate General submitted since ultimately the State appeals were allowed, the interim order passed by the Supreme Court has no legal effect. Learned Advocate General also submitted in the absence of any contractual obligations that the State should adjust the amount paid towards kist first, it is always open to the State to adjust the said amount towards interest. Learned Advocate General referred to various passages in *Rowlett on Principal and Surety*, 4th Edn. and highlighted the principle laid down in *Clayton's* case and also contended that

interest is to be paid before principal unless by a course of dealing binding upon the parties, it has been added to and has become part of principal. Reference was also made to a decision of Full Bench of the Lahore High Court in *Jia Ram v. Sulakhan Mai*, (1941) 196 I.C. 625 and contended that the general principle of appropriation of payments towards a debt is that in the absence of a specific indication to the contrary by the debtor, the money is first applied in payment of interest and then when that is satisfied, in payment of the capital. Learned Advocate General further submitted interim orders passed by this Court would not prejudice the right of the State and would not go contrary to the terms and conditions of the agreement between the parties. There is no stipulation in the agreement that the amount paid should be given credit to principal amount rather than towards interest. With regard to payment of interest at 18% from 1-4-1986, according to learned Advocate General, it has got statutory basis.

9. In order to examine the various issues raised in these cases, we have to primarily examine the terms and conditions of the agreement, as well as various provisions of the Kerala Abkari Act and the Auction Rules. Kerala Abkari Act was enacted to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating drugs in the State of Kerala. Section 18A enables the State Government to grant to any person or persons on such conditions and for such period as they may deem fit, the exclusive or other privilege of manufacturing or supplying by wholesale and selling by retail, any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration of the grant of such privilege. The amount of rental may be settled by auction, notification, or by any other method as may be determined by the Government from time to time, and may be collected to the exclusion or in addition to the duty or tax leviable under Sees. 17 and 18. Section 29 of the Abkari Act enables the State Government to make rules for the purpose of carrying out the provisions of the Act. In exercise of the rule-making power, the State Government framed the Kerala Abkari Shops (Disposal in Auction) Rules, 1974. Rule 3 enables the State Government to part with the privilege of vending toddy, arrack, etc. in public auction. Rule 5 deals with general conditions applicable to sale of Abkari Shops. Rule 5(15) obliges the auction purchaser to execute a permanent agreement in Form II and take out necessary licence before installation of the shop or shops. Various other terms and conditions are also prescribed in Rule 5 as well as Rule 6. Rule 6(25) says that the amount for which privilege has been purchased shall be payable by the licensee into the local Taluk or other Treasury as may be ordered from time to time. The rental due for the period from 1st April of the year to 31st March of the year following shall be payable in 10 equal monthly instalments. The instalments shall be payable on or before the 10th day of each English Calendar month beginning from 1st April. In case of failure of payment, interest at the rate of 12 per cent or such other rate of interest as may be fixed by Government from time to time per annum shall be charged from 11th. Previously the interest rate was 9% per annum, which was

substituted by 12 per cent by S.R.O. No. 111/80 dated 1-1-1980 published in K.G. No. 5 dated 29-1-1980 with effect from 1-4-1980. Another clause was also added stating that "the amount remitted by a defaulter towards arrears shall be adjusted towards interest due from him in the first instance and the balance if any shall be credited towards the principal amount". The said amendment was effected vide S.R.O. No. 535/80 dated 3-6-1980 published in K.G. No. 25 dated 17-6-1980.

10. The agreement executed by the petitioner and various others, as already mentioned, stipulates that failure to pay the kist amount within the period mentioned in Sec. 6(25) will entail payment of interest at the rate of 12% per annum. Going by the rules, the amount remitted by a defaulter towards arrears shall be adjusted towards interest due from him in the first instance and the balance if any shall be credited towards the principal amount. In this connection it is profitable to extract the provision, which was in force during the currency of the agreement between the petitioners and the State:

6(25). The amount for which privilege has been purchased shall be payable by the licensee into the local taluk or other treasury as may be ordered from time to time. The rental due for the period from 1st April of the year to 31st March of the year following shall be payable on or before the 10th day of each English Calendar month beginning from 1st April. In case of failure of payment, interest at the rate of 12% per annum shall be charged from 11th. The amount remitted by a defaulter towards arrears shall be adjusted towards interest due from him in the first instance and the balance if any shall be credited towards the principal amount.

As already mentioned the words "amount remitted by a defaulter will be adjusted towards interest due from him in the first instance and the balance if any will be credited towards the principal amount" were substituted by S.R.O. No. 535/80 dated 3-6-1980 published in the K.G. No. 25 dated 17-6-1980. The rate of interest 12% was later substituted by 18% as per S.R.O. No. 348/86 published in the Kerala Gazette No: 173 dated 28-2-1986 with effect from 1-4-1986. Again for the words "18 per cent" the words "18 per cent or such other rate of interest as may be fixed by Government from time to time" were substituted by SRO. No. 665/87 published in K.G. Ex. No. 409 dated 14-5-1987. Reference may also be made to Rule 6(29) which was in existence at the time of execution of agreements by the petitioners, which is extracted below:

6(29) Interest on all money due shall be payable at the rate of 12 per cent annum.

The words "12 per cent" were later substituted by the words "18 per cent" as per S.R.O. No. 348/86 published in K.G. Ex. No. 173 dated 28-2-1986 with effect from 1-4-1986, and the same was further substituted with the words "18 per cent or such other rate of interest as may be fixed by Government from time to time per annum" vide S.R.O. No. 665/87 published in K.G. Ex. No. 409 dated

14-5-1987 with effect from 14-5-1987. The said provision now reads as follows:

Interest on all money due shall be payable at the rate of 18 per cent or such other rate of interest as may be fixed by Government from time to time per annum.

11. The Kerala Abkari Act and the Kerala Abkari Shops (Disposal in Auction) Rules lay down various rules and regulations which govern the legal and contractual relationship between the parties. The intending bidders are bound not only by the terms and conditions of the agreement, but also by the statutory rules which are in force from time to time. Petitioners and other licensees have participated in the public auction with open eyes and agreed to comply with various provisions of the Act, Rules and the terms and conditions of the agreement. Supreme Court in *Assistant Excise Commissioner v. Issac Peter* (1994) 1 KLT 698 has noted that the contract between the parties is governed by statutory provisions, i.e. provisions of the Act, Rules, the conditions of licence and the counter part agreement. They constitute the terms and conditions of the contract. They are binding both upon the Government and the licensee. Neither of them can depart from them, and that it is not open to any officer of the Government to either modify, amend or alter the said terms and conditions. Petitioners are therefore bound not only by the terms and conditions of agreement, but also the rules, regulations, etc. framed by the Government from time to time. In fact Rule 6(39) stipulates as follows:--

The licensee shall be bound by all the rules which have been passed under the Abkari Act and which may hereafter be made under the said Act or under any law relating to Abkari revenue which may hereafter be made.

Therefore going by Rule 6(25) as amended, as well as Rule 6(29) read with Rule 6(39) of the Auction Rules, I am of the view licensees are bound to pay interest stipulated in the agreement as well as enhanced rate of interest, subsequently fixed by the Government on all money due which would take in the amount of kist defaulted as well. In the instant case, it is not disputed that when petitioners entered into various agreements, the rate of interest was 12% per annum. The same was subsequently enhanced to 18% per annum. The same was subsequently enhanced to 18% per annum, by an amendment which came into effect on 1-4-1986. This amendment has statutory force and therefore this amendment though was not part of the agreement, petitioners are bound by this amendment, since Rule 6(29) specifically says that interest on all money due shall be payable at the rate of 18 per cent or such other rate of interest as may be fixed by the Government from time to time per annum. Going by the above mentioned statutory rules, since licensees are bound by Rule 6(39) the State is entitled to demand 12% interest as per the terms and conditions contained in the agreement read with Rule 6(25). If the licensee is failed to remit any amount in time, then that amount will carry interest at the rate of 18% per annum with effect from 1-4-1986. State Government is also statutorily obliged to adjust the amount remitted by the defaulter towards interest due from him in the first

instance and the balance need be created towards principal amount. I am of the view even in the absence of such a stipulation in the agreement it is open to the Government to do so, in view of the fact that the general principle of appropriation of payments towards a debt is that in the absence of a specific indication to the contrary by the debtor, the money is first applied in payment of interest and then when it is satisfied in payment of the capital. In the instant case, in any view, such a provision was already incorporated in Rule 6(25) of the Rules during the currency of the agreement and the petitioners are therefore bound by those statutory rules.

12. Counsel further contended that Rule 6(25) of the Auction Rules is in conflict with Sec. 59 of the Contract Act, and that the expression "forfeiture" mentioned in Sec. 29(2)(r) of the Act would exclude the rule-making authority to frame a rule in the nature of Rule 6(25) cannot be accepted. There is no element of forfeiture under R.6(25) of the Auction Rules. Rule 6(25) is very clear in its terms. It obliges an auction purchaser to pay rental due for the period from 1st April of the year to 31st March of the year following on or before 10th day of each English Calendar month. The provisions specifically says that in case of failure to pay the kist amount, the defaulter has to pay interest. If there is default, the amount remitted by a defaulter towards arrears shall be adjusted towards interest due from him in the first instance and the balance if any shall be credited towards the principal amount. The Supreme Court in *Chairman of The Bankura Municipality Vs. Lalji Raja and Sons*, , took note of the meaning of the word "forfeiture" the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement it would not come within the definition of "forfeiture". State is only collecting kist amount legitimately due to it for parting with the privilege by public auction. They are collecting interest by way of statutory provision and on the basis of the agreement executed between the parties. As the petitioners are bound by it, there is no element of forfeiture arises in this case.

13. Question of forfeiture may arise when we refer to Rule 6(28) which says that if the licensee fails to pay kist, the department can cancel the licence and order a resale at the risk of the licensee or direct the management of the business of the contract by departmental agency or otherwise dispose of the same. All losses on account of such cancellation and resale or Departmental management or other disposal of the privilege shall be borne by the defaulter and that he will have no right to gain, if any, which accrues. The whole of the deposit, if any, made at the commencement of the lease shall be liable to forfeiture. The departmental management fee collected from a shop while it was under departmental management due to default of payment of kist, shall be liable to forfeiture at the discretion of the Excise Commissioner. Further Rule 6(34) says if any licensee is convicted of any offence under any law for the time being in force relating to

excise revenue, the Excise Commissioner may declare his licence forfeited. If the licensee is convicted under the Penal Code or after the issue of licence to him, should it transpire that previous to such issue he was convicted under the law or was disqualified to hold a shop under sub-rule (3) of Rule (5) such conviction or the disqualification shall render him liable to forfeiture of the licence and also the forfeiture of his deposit. I am of the view it is only under the above mentioned circumstances, the question of forfeiture arises and therefore Rule 6(25) would not offend Sec. 29(2)(r) of the Act or goes contrary to Sec. 59 of the Contract Act. I am therefore of the view that Rule 6(25) has got a statutory basis and Government have got the power to frame such a rule under Sec. 29 of the Abkari Act read with Sec. 18A of the Act.

14. Now let us examine whether the final judgment rendered by this Court in Issac Peter's case, 1984 KLT 88, or the interim order passed by the Supreme Court, or the interim order passed by this Court in these cases will have any impact on the contractual or legal relationship between the licensees and the State. I have already mentioned that petitioners and the State are governed by various provisions of the Abkari Act, Auction Rules and various agreements entered into between the parties. The Supreme Court in *Asst. Excise Commissioner v. Issac Peter*, (1994) 1 KLT 698 has categorically stated that the contract between the parties is governed by statutory provisions, i.e. provisions of the Act, the rules, the conditions of licence and the counter part agreement. According to the Supreme Court, they constitute the terms and conditions of the contract, and they are binding both upon the Government and the licensee. In the above mentioned decision, Supreme Court held as follows:

We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract."

Licensees had moved this Court challenging various recovery notices issued by the State and seeking a direction to the State to supply additional quantity of arrack. As I have already stated, this Court found in favour of the licensees and quashed all the revenue recovery proceedings and declared that the State was

bound to supply additional quantity of arrack. On the strength of the stay granted by this Court and the judgment of a Division Bench of this Court, licensees did not pay the amount to the State. this Court's decision in Issac Peter's case was subsequently reversed by the Supreme Court in Asst. Excise Commissioner v. Issac Peter, (1994) (1) KLT 698. In other words, during the period between the date of judgment of a Division Bench of this Court and the judgment of the Supreme Court, licensees did not pay amount, eventhough certain amounts were paid by way of interim orders of the Supreme Court. All the licensees gainfully utilised the amount, which otherwise should have been paid to the State, going by the agreements, as well as by the provisions of the Act and the Rules. State therefore could not utilised the amount which was legitimately due to them for the purpose of the State. Had the kist amount been paid, by the petitioners in time as per the agreement there is no question of payment of interest to the State. Consequently the amount which the petitioner ought to have paid on the basis of the agreements could have been utilised by the State for public purpose. Payment of interest necessitated because of the default of the licensee for which the State cannot be penalised or put to loss. The Supreme Court in Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, had occasion to consider identical question in a matter concerning electricity tariff. Revision of tariff for the electricity charges payable by the company and other consumers were struck down by this Court and the same was subsequently reversed by the Supreme Court. Question arose whether the company is bound to pay interest. Supreme Court held as follows:

It will be the endeavour of the court to ensure that a party who had suffered on account of decision of the court, since finally reversed, should be put back to the position, as far as practicable, in which he would have been if the decision of the court adversely affecting him had not been passed. In giving full and complete relief in an action for restitution, the court has not only power but also a duty to order for mesne profits, damages, costs, interest, etc. as may deem expedient and fair conforming to justice to be done in the facts of the case."

Supreme Court noticed in that case the company was an ongoing business concern and must have utilised the money saved on account of the decision of the High Court gainfully in its commercial activities. It was noted that the Board had to suffer financial loss because of the said erroneous decision of the High Court. Supreme Court concluded that it will be lawful conforming to equity and well established principle of restitution, for the Board to claim interest at 18% on the unpaid portion of the bill drawn on the basis of revised tariffs. Court also found 18% interest per annum is just and proper. In view of the above mentioned decision of the Supreme Court the decision relied on by the petitioner, 1994 KLJ (TC) 255 - Nachimuthu v. STO, and the judgment in W.A.49/91 are not binding on the parties.

15. Same is the position with regard to interim orders passed by the Supreme

Court as well as by this Court. Interim orders were passed by this Court in these writ petitions as well as by the Supreme Court at the volition of the petitioners. Petitioners wanted to stall the proceedings and invoked jurisdiction of the court and Supreme Court and obtained interim orders. Finally Supreme Court found that there was no merit in the case put forward by the licensees. Therefore those interim orders could not be relied upon by a party to build upon a case to their advantage, unless and otherwise ordered by the Supreme Court. It is worthwhile to remember legal maxim "*Actus Curiae neminem gravabit*" which means an act of courts shall prejudice no man. Since the action of the State Government was upheld by the Supreme Court all the legal consequences of which will naturally follow. The parties should be put back in the same position at which the dispute arose. When the licensees failed to pay kist in time, the State invoked the revenue recovery proceedings which they can do as per the Act, Rules as well as the agreement entered into between the parties. It is the petitioners who have stalled the recovery proceedings initiated by the State. Ultimately all the actions of the State Government were upheld by the Supreme Court. Therefore the contention of counsel for the licensees that on the basis of interim orders of the Supreme Court they have paid amount towards kist and consequently State cannot demand interest for the amount paid towards kist cannot be sustained.

16. Scope and effect of interim or interlocutory orders passed by courts have come up for consideration before the Supreme Court in *Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others*, . Supreme Court held as follows:

The grant of stay of the notification in the instant case had not the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them when their writ petitions were dismissed ultimately. Holding otherwise would mean that even though the electricity Board, who was the respondent in the writ petitions succeeded therein, yet would be deprived of the late payment surcharge which was due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of orders of the court and for no fault of its. It succeeds in the writ petition and yet loses.

Court concluded that:

It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or orders of the court prejudicing a party for no fault of its and would also mean rewarding a writ petitioner inspite of his failure.

Supreme Court opined that such unjust consequence cannot be countenanced by the courts. Supreme Court in *Gursharan Singh and others etc. Vs. New Delhi*

Municipal Committee and others, also upheld the claim of interest for the amount due to the Municipality which was delayed by way of court's intervention. Court upheld the claim of the Municipality and held that Municipality is justified in making a claim for interest on the arrears which remained unpaid for more than 12 years because of interim orders passed by the Supreme Court. *Agricultural and Processed Food Products Vs. Oswal Agro Furane Ltd. and others*, is a case where High Court interfered with the order passed by the department in the matter of payment of excise duty, but only to be reversed by the Supreme Court. Supreme Court held that a litigant who obtains an incorrect order and does not pay the statutory dues should not be allowed to make any profit or gain from the infraction of law. The money which was legitimately due to the Government has been utilised by the Company in its business. Dealing with such cases which have financial implications involving business houses, or companies it is the commercial principles which must be applied by the court while ordering payment of interest. Keeping this principle in mind it would be just and proper that the company be directed to pay in addition to the excise duty payable interest at the rate of 18% per annum.

I am therefore of the view if the court is granting the benefit as contended by the petitioners, on the strength of interim orders obtained by the petitioners on their own volition, court will be going against the terms and conditions agreed upon between the parties as well as going against the provisions of the Abkari Act and Rules and depriving the State the benefit of the final judgment of the Supreme Court. Court is not empowered to alter the terms and conditions of the agreement and licence fee kist and interest prescribed by law. No writ can be issued contrary to the provisions of law. The fact that court granted interim orders as prayed for by the petitioners on their own volition does not absolve them from consequences of their action, which flow according to law. They are bound to pay the amount in accordance with law and in accordance with the terms and conditions agreed upon by the parties. Therefore I am of the view, State is justified in demanding interest at 12% from 1-4-1980 till 31-3-1986 and at 18% from 1-4-1986 for arrears due and also justified in adjusting the amount paid, towards interest due in the first instance, and then credit the balance towards principal amount. State and Excise Department will take expeditious steps to recover the amounts due in accordance with this judgment at the earliest.

O.Ps. therefore lack, merits and are dismissed.