
(1984) 08 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition 6893 of 1977 etc.

Ramesh Enterprises

APPELLANT

Vs

Coffee Board

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 13, 226
Customs Act, 1962 — Section 26 (1)

Citation : (1985) ILR (Kar) 982 : (1985) 2 KarLJ 31

Hon'ble Judges : Puttaswamy, J

Bench : Single Bench

Advocate : V. Krishnamurthy, S. Ramaswamy Iyengar, K. Shivashankar Bhat and H.G. Ramesh, for the Appellant; R.J. Babu, for the Respondent

Final Decision : Dismissed

Judgement

Puttaswamy, J.

1.As common questions of law arise for determination in these cases, I propose to dispose of them by a common order, however referring to the documents produced in Writ Petition No. 6893 of 1977 as if they are produced in all other cases also.

2. Among others, the Petitioners are engaged in the business of exporting coffee from India to various foreign countries. For carrying on their export business in coffee, the Petitioners have got themselves registered as "registered exporters, and have obtained permits from the "Coffee Board"-respondent (hereinafter referred to as the Board) constituted and functioning under the Coffee Act (Central Act VII of 1942) and the Rules made thereunder (hereinafter referred to as the Act and the Rules).

3. The Board sells Coffee in export auctions held for that purpose at Bangalore from time to time in which registered exporters purchase coffee and export to their foreign buyers. On the fateful day of 18-5-1977, there was one such export

coffee auction sale held by the Board on the "terms and conditions of sale of coffee in the course of export" (Exhibit-A) to be hereinafter referred to as the Notification. In the auction sale held on 18-5-1977, the Petitioners and two other registered exporters called "Brooke Bond India Limited, Bangalore" and "Chand Exports (P) Limited, Bangalore" offered their highest bids to purchase the quantities of coffee detailed hereunder :

Sl. No.

W.P. No.

Name of the Petitioner/ Exporter

Quantity of Coffes purchased in tonnes

1

2

3

4

1.

6893/77

M/s Ramesh Enterprises

522.6

2.

461/79

M/s Swasti Produce Co. (P) Ltd.

401.4

3.

13628/79

M/s M.S P. Exports (P) Ltd.

78.6

4.

4526/80

M/s T.A.K. Assadi

62.9

5.

4527/80

M/s U.V.S. Mallya & Co. (P) Ltd.

9.0

6.

NIL

M/s Brooke Bond India Ltd.

54.0

7.

NIL

M/s Chand Exports (P) Ltd.,

182.7

On the acceptance of these bids by the sale Conducting Officer of the Board, each of the Petitioners and the other two buyers and the Board have entered into written contracts in a standard form stipulated by the Board, paid the sale price thereto, received the goods purchased by them and have then exported the same.

4. Prior to 18-5-1977 the duty of customs or export duty levied on Coffee exported under the Customs Act of 1962 (Central Act 52 of 1962) (hereinafter referred to as The Customs Act) was Rs. 2,200/- per quintal. But, Government of India in exercise of the powers conferred on it by Section 26(1) of the Customs Act in its notification No. 61 / Customs dated 18-5-1977 (Exhibit-B) reduced such customs duty on Coffee from 2,200/- to Rs. 1,600/- per quintal. Unfortunately, when the Coffee auction sales were held at Bangalore on the same day, the Board and the Petitioners were unaware of the same, and the sales were held and concluded as if the export duty was Rs. 2,200/- per quintal.

5. But, later the Board, taking note of the said notification, examined the same and by its separate but identical letters dated 2-6-1977 (Exhibit-C) called upon each of the Petitioners and the other two exporters to refund the proportionate amount of reduced export duty to the Board in terms of clause 10 of the notification. In pursuance of the said demands and the voluntary commitments made in the appropriate forms, thereto (Exhibit-C) each of the Petitioners have paid the following amounts to the Board as against the sums detailed against each of them found due by the Board.

Sl. No.

W.P.No.

Name of the Petitioner/ Exporter.

Amount Due

Amount Paid

1.

6893/77

M/s Ramesh Enterprises

29,50,650

7,59,600

2.

461/79

M/s Swasti Produce Co. (P) Ltd.

14,81,625

11,37,800

3.

13628/79

M/s M.S.P.Exports (P) Ltd.

4,02,750

4,02,750

4.

4526/80

M/s T.A.K. Assadi

4,64,325

4,64,325

5.

4527/80

M/s U.V.S. Mallya & Co. (P) Ltd.

74,250

74,250

But, the Petitioners in Writ Petitions Nos. 6893177 and 461/1979, who have voluntarily paid Rs. 7,59,600/- and Rs. 11,37,800- respectively withholding the balance due by them, have approached this Court under Article 226 of the Constitution challenging the demands themselves and for refund of the amounts

paid by them. In the other cases, the Petitioners who had voluntarily paid the amounts demanded, have sought for their refund. M/s. Brooke Bond India Limited and Chand Exports (P) Limited who have also paid the amounts demanded by the Board have not approached this Court.

6. In Writ Petitions Nos. 6853 of 1977 and 461 of 1979 this Court has made interim orders for the balance of amounts that had not been paid by them only and not in respect of the amounts already paid by them or the others.

7. The Petitioners have claimed that the notification (Exhibit-A) on the basis of which sales have been held -and concluded are statutory Rules framed by the Board under the Act and the agreements entered into between them and the Board are statutory agreements and the demands made are in violation of them and law are unenforceable, on which ground they also claim for the refund of the amounts already paid by them.

8. In separate but identical returns, the Board, at the threshold, has urged that the transactions concluded and sought to be enforced which are contractual are not statutory and are not reviewable by this Court under Article 226 of the Constitution. On merits, the Board has urged that the; claims made by it were justified and legal.

9. Sriyuths V. Krishna Murthy and S. Ramaswamy Iyengar, K. Shivashankar Bhat, H. G. Ramesh appeared for the Petitioners. Sri R. J. Babu has appeared for the respondent in all the cases.

10. Both sides have relied on a large number of authorities in support of their respective cases and those that are relevant will be noticed by me at the appropriate stages.

11. Learned Counsel for the Petitioners have urged that the notification (Exhibit-A) on the basis of which sales were held and the disputed claims were founded, were statutory Rules and the agreements entered into between the parties were statutory agreements or obligations reviewable by this Court under Article 226 of the Constitution.

12. Sri Babu while refuting the contention of the Petitioners has urged that they were contractual in nature and cannot be enforced under Article 226 of the Constitution.

13. The Board constituted - by the Act, with powers to control, supervise and administer the Coffee Industry in the country is an "authority" and "State" within the meaning of that term occurring in Article 12 of the Constitution and that when it exercises statutory powers, a Petition under Article 226 of the Constitution is maintainable, cannot be doubted. Sri Babu also did not rightly dispute this position.

14. The Board as a statutory Corporation and a juristic person, can enter into contracts. Section 5 of the Act expressly authorises the Board to enter into

contracts. But, by reason of this only every contract entered into by the Board or with the Board that too in commercial transactions, like sale of coffee in auction sales, does not become statutory contracts or obligations.

15. The heading of the notification reads as "Terms and conditions of sale of coffee in the course of Export." The notification sets out in detail the designation of the officer that will conduct the auction sales, the procedure for the conduct of auctions and the terms and conditions subject to which auctions will be held and various other details. On the very terms, as also in truth and substance, the notification is only a "tender notification" that is generally issued by Government and Corporations inviting offers. In Consolidated Coffee Ltd. -v.- Coffee Board, Bangalore the Supreme Court has treated this as an "auction condition" only and not as Rules.

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

17. In Coffee Board, Bangalore -v.- Joint Commercial Tax Officer, Madras and Another, the Board had approached the Supreme Court under Article 32 of the Constitution challenging the action of the Sales Tax authorities of Tamilnadu under the Madras General Sales Tax Act (1 of 1959) demanding Sales Tax on sales in the course of export of coffee out of India. In examining that claim of the Board, Hidayatullah, C.J. who spoke for the majority and Sikri, J. (as he l. Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, . Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, then was) who was in the minority have referred to the notification as "Rules" and examined the case of the Board on that basis. While so referring the Court has nowhere held that they are statutory Rules framed by Government of India under the Act, that alone is empowered to frame the Rules and not the Board at all. In this case, the Court has loosely employed the term "Rules" for the purpose of examining whether the sale transactions were in the course of export or not. The use of the term "Rules" for the "notification" was for purposes of that case only and cannot be understood as the Court declaring the notification or the terms and conditions as "Rules" made under the Act or as statutory Rules, As pointed out by Hegde, J. in H. M. Maharajadhiraja Madhava Rao Jivaji Rao Scindia Bahadur and others -v.-Union of India "Judges are not oracles" and every sentence occurring in a case cannot be taken as settling the whole law and every question that arises in all future cases. In the later Consolidated Coffee Limited's

case, the Supreme Court referring to the earlier Coffee Board's case itself has examined the notification as a tender notification or auction conditions only and was not statutory Rules framed either by the Central Government or the Board under the Act. In this view, the reliance placed by the Petitioners on the Coffee Board's case as if the matter is completely concluded in their favour is without any merit.

18. In the Gujarat State Financial Corporation -v.- Lotus Hotels Pvt, Ltd., on which very strong reliance was placed for the Petitioners, as if this contention was again concluded in their favour by that ruling, the facts in brief were these : On an application made by M/s Lotus Hotels Private Limited (hereinafter referred to as "Lotus"), the Gujarat State Financial Corporation (hereinafter referred to as the Corporation) established under the State Financial Corporations Act of 1951 to provide credit facilities to 3. H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, 4. Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., industrial concerns, on 24-7-1978 sanctioned a loan of Rs. 29.93 lakhs to Lotus for establishing a 4 star hotel at Baroda on certain terms and conditions. On 13-2-1979 the Corporation, cancelled the earlier loan facility sanctioned by it and refused to disburse the loan amounts to Lotus. On a Writ Petition filed by Lotus, a learned Single Judge of the High Court of Gujarat, issued a mandamus to the Corporation to disburse the loan amounts to Lotus which was also affirmed by that Court in a Writ appeal, since reported in The Gujarat State Financial Corporation, Ahmedabad Vs. Lotus Hotels Pvt. Ltd., , which was challenged by the Corporation before the Supreme Court which dismissed the same.

19. Before the High Court and the Supreme Court Lotus maintained that the duties performed by the Corporation under the Act was statutory and the Corporation was estopped from cancelling the loan sanctioned and not disbursing the same as earlier sanctioned and agreed on the application of the principles of promissory estoppel, both of which were accepted by the Supreme Court in affirming the judgment of the Gujarat High Court. But, that is not the position in the present cases. The enforcement of liability is founded on a term in an ordinary contract between the parties. The principle of promissory estoppel on which Lotus founded its case and accepted by the Court, has hardly any relevance to the enforcement of the Contract Hence, the ratio in Gujarat State Financial Corporation's case does not bear on the point and assist the Petitioners.

20. On the foregoing discussion, the one and the only conclusion that follows is that the notification (Exhibit-A) is nothing but a "tender notification" issued by the Board on the terms and conditions of which it had invited offers from the intending bidders. The notification or the terms and conditions stipulated therein inviting offers are not statutory Rules or law within the meaning of that term occurring in Article 13 of the Constitution.

21. On the basis of the tender notification (Exhibit-A) the Petitioners have offered, their bids to the Board which has accepted; them on the terms and

conditions stipulated therein only. On the authorised sale conducting officer of the Board" accepting the highest bids only, there will be a concluded executory contract between the bidder and the Board and not otherwise.

22. On the acceptance of the highest bid by the authorised sales conducting officer of the Board, a written contract in the following form stipulated by the Board is entered into between the parties and the standard form stipulated by the Board for that purpose reads thus:

COFFEE BOARD

Contract for sale of Coffee solely for Export out of India

Contract No.....

Date.....

Name of Agent of the BoardPlace.....

The Coffee Board, Bangalore, hereby agrees to sell and the Buyer named herein agrees to purchase the following quantity of Coffee for Export out of India as under :

Season.....

Date of Auction.....

Name of Buyer.....

Description of goods.....

Quantity (Kilograms) and Lot number.....

Quality.....

Delivery Period.....

Place of Delivery.....

EX WORKS OF THE BOARD'S AGENT NAMED ABOVE, at

Destination to which the coffee should be exported.....

Price.....

NOTE : The prices are ex-bags, ex-Works/ex. Depots and are exclusive of Sales Tax, Excise Duty, Customs Duty and all other Duties and taxes levied by Central or State Government or local authority.

General Condition :

This contract is subject to and is governed by the Coffee Board's "Terms and Conditions of Sale of Coffee for export out of India."

Special Conditions :

(Buyer or his agent) (Agent of the Coffee Board)"

Every one of the Petitioners and the Board have entered into written contract in this form expressly undertaking to abide by the terms and conditions stipulated in the tender notification. With this all the terms and conditions stipulated in the tender notification should be read as incorporated into the written contract entered into between the Petitioners and the Board on the conclusion of the auction sale.

23. Even assuming there was any doubt in the matter as to whether what was entered into between the Petitioners and the Board was an ordinary contract or not and what are its terms and conditions, those doubts are completely cleared and put beyond all controversy on the parties entering into a written contract in the aforesaid standard form. When one examines this contract it is crystal clear that what, was entered into between the Petitioners and the Board Was an ordinary contract between the two contracting parties governed by the Indian Contract Act or the ordinary law of contract and was not a statutory contract or a statutory obligation at all. Even the latest ruling of the Supreme Court in State of Haryana and others -v.- Lal Chand and others dealing with the difference and distinction between statutory contracts and 5. AIR 1985 SC 1326 contracts entered into in exercise of executive powers vis-a-vis Article 299 of the Constitution does not help the Petitioners, to hold otherwise.

24. Sri Bhat has, however, urged that the terms and conditions stipulated in the contract were the norms or standards in the realm of administrative law, the violation of which was reviewable by this Court under Article 226 of the Constitution on the principles enunciated by the Supreme Court in Ramana Dayaram Shetty -v.- The International Air Port Authority of India and others.

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

26. In Abdul Salam -v.- Union of India and others dealing with an unilateral cancellation of an ordinary contract by the Union of India in favour of that Petitioner, examining somewhat the very contention urged by Sri Bhat, in that case, I rejected the same in these words :

"II. So far as disposal of a contract or largesse by the State, the right of every

citizen to participate as enshrined in Article 14 of the Constitution is now concluded by Ramana Dayaram Shetty's case. A cancellation of contract awarded to a citizen or breach in the performance 6. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, WP. No. 4201 of 1981 DD 1-7-198 of the contract, cannot be placed on the same footing as the disposal of a contract or largesse by the State. Why a contract is cancelled and whether the same is justified and the ultimate cancellation thereto, cannot by any stretch of imagination be equated to the disposal of the contractor largesse by the State. Any attempt to equate the disposal of the contract and the working of that contract when awarded, would make the entire performance of contract as subject to the supervisory jurisdiction of this Court under Article 226 of the Constitution. Any such attempt by this Court is fraught with grave dangers and would virtually convert this Court into an ordinary Civil Court adjudicating all trailers and all claims arising under the contract or its breach thereof. On any principle or authority, find it difficult to accept the contention urged by Sri Bhat. On the other hand, the following observations of the Supreme Court in Bihar Eastern Gangetic Fishermen Co-operative Society Limited's case clearly negatives the contention of Sri Bhat :

"All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly we are clearly of the opinion that Respondent-I was not entitled to apply for grant of a writ or mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same"

For these reasons, I reject the contention of Sri Bhat."

What I have expressed herein is also an answer to this contention of Sri Bhat.

27. On the foregoing discussion, I hold that there is no merit in this contention of Sri Bhat and I reject the same.

28. When once it is held that the contracts entered into between the Petitioners and the Board are ordinary commercial contracts and are not statutory contracts or obligations, on the ratio of the rulings of the Supreme Court in Iyer Shankar and others etc. -v.- The Deputy Excise and Taxation Commissioner and others etc, Kulchinder Singh and others -v.- Hardayal Singh Brar and others, Radhakrishna Agarwal and others -v.- State of Bihar and others, The Bihar Eastern Gangetic Fishermen Co-operative 8. Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, 9. Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, 10. AIR 1977 SC 1496 Society Limited -v.- Sipahi Singh and others. The Divisional Forest Officer, -v.- Bishwanth Tea Co. Ltd. and the Division Bench ruling of this Court in. Mahadesewara Stores -v.-State of Karnataka and others it follows that these Writ Petitions challenging the claims of the Board flowing from the terms and conditions of an ordinary contract are not maintainable and are liable to be dismissed without examining all other contentions. But, as my order is subject to an appeal both on questions of fact

and law and otherwise also, I consider it proper to notice all other contentions urged before me and state my views on all of them.

29. Learned Counsel for the Petitioners have contended that clause 10 of the notification did not authorise the Board to claim refund of the difference of excise duty of Rs. 600-per quintal on export coffee purchased by them on 18-5-1977

30. Sri Babu has sought to support the claim of the Board with considerable vehemence and emotion also.

31. Clause 10 of the notification or the terms of the contract as earlier found by me, on the construction of which there is dispute between the parties, reads thus :

"TENDER OF BIDS :

10. At the auction., the intending buyers, or, in their absence, their accredited agents or nominee shall tender their bids orally. The bids shall be recorded by the Sale Conducting Officer or his Assistant In a Register maintained for the purpose. The successful bidders present sign their names in Register at the close of the sale of each lot which pertains to them.

The Bid tendered shall be exclusive of Sales Tax, Central Excise Duty, Customs Duties, Octroi Duty and every other imposts and shall be on the basis of delivery of coffee ex-bags excursing works.

""However, should there be any change in the rates of taxes, duties and imposts mentioned above between the date of auction at which the exporter purchased the coffees and the expiry of a period of 45 days from the date of such auction including the date of the acation, the consequent 11. The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, 12. Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., 13. 1983(2) KLJ 20 enhancement of the liability of the exporter for the payment of any or all of such levies in respect of the coffees purchased at such auction and shipped within the above said period shall be to the account of the Board to the extent of 50 percent of the increase in the rates of any or all such levies.

Provided, however, the extent of such enhanced liability which will be to the account of the Board shall be 75% of the increase in the rates of any or all such levies if the coffees purchased at the auction are shipped within a period of 30 days from the date of auction.

Any increase in the rates of any or all of such levies on coffees attracting the increased rates and not shipped within a period of 45 days from the date of the auction at which the coffees were purchased shall be entirely to the account of the exporter. In case of any reduction of the liability of the exporters on account of any reduction in the rates of any or all the taxes duties and imposts within a period of 45 days from the date of the auction on coffees attracting such reduced rates of levies such reduction of liability shall accrue to the Board to the extent of

(a) 50% of the reduction in the rates of any or all of such taxes duties and imposts on coffees attracting such reduced rates of levies and shipped within a period of 30 days from the date of auction,

(b) 15% of the reduction in the rates of any or all of such taxes duties and imposts on coffees attracting such reduced rates of levies and shipped beyond a period 30 days from the date of auction.

The additional sums that may become payable by the exporters to the Board as a consequence of such reduction in the rates of taxes., duties and other imposts shall be paid within 7 days, from the date of shipment.

In computing the period of 30 days or 45 days, as the case may be, any delay occasioned by Dock Strike,. War, Revolution, Blockade, or other causes beyond the control of the exporter shall be excluded. The decision of the Chief Coffee Marketing Officer as to whether the delay was occasioned by any cause beyond the control of the exporter shall be final."

Prior to 1976 Clause 10 of the notification stopped at the sentence "The bid tendered shall be exclusive of Sales Tax, Central Excise Duty, Customs Duties, Octroi Duty and every other imposts and shall be on the basis of delivery of coffee ex-bags ex-curing works" and did provide for the contingency of increases or decreases being shared by the exporters and the Board. On the sale of export coffee, the exporter was exclusively liable to make payment of export duty to Government and the Board did not come to the picture at all. The benefits and burdens of decreases or increases in the export duty were exclusively shared by the exporter-purchaser with no liability on the Board at all.

32. But, in the early part of 1979 or so, an association called "the Mangalore Coffee and Produce Merchants" Association" (hereinafter referred to as the Association) representing the exporters who are its members, represented to the Board to provide for cushioning or absorption of increases in export . duty when such increases occur after exporters purchase coffee in the export auctions. On that representation, the Board examined the matter in depth and with the consent of that Association introduced the Clause now found dealing with the cases of increases and decreases in export duty. With this background, it is necessary to ascertain the true scope and ambit of that Clause with due regard to the settled rules of construction of contractual documents.

33. The general rules for construction of documents have been neatly and lucidly summarised in the classic treatise of Chitty on Contracts, 25th Edition at paras 765 to 80 (pages 420 to 437) of Vol. I and by Sir Roland Burrows in his treatise "Interpretation of Documents", II Edition. A reproduction of all of them is neither necessary nor profitable. But some of those that are more relevant, admirably summarised in Chitty on Contracts that should be kept in the fore-front are these :

765. Object of construction : The object of all construction of the terms of a

written agreement is to discover there from the intention of the parties to the agreement. The rules which govern the construction of contracts are the same at law and in equity, for simple contracts and for those under seal. There is not in law any difference of construction between mercantile contracts and other instruments although in commercial documents the terms used "must be understood in a business and practical sense."

Intention of the parties : The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say, the meaning of the document or of a particular part of it is to be sought in the document itself: "One must consider the meaning of the words used, not what one may guess to be the intention of the parties." However, no contract is made in a vacuum. In construing the document, the Court must therefore always have regard to its commercial purpose and the factual background against which it was made.

Further, the law does not approach the task of construction with too nice a concentration on individual words, ""The common and universal principle ought to be applied : namely, that an agreement ought to receive that construction which its language will admit, and which will best effectuate the intention of the parties, to be collected from the whole of the agreement, and that greater regard is to be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent." As Lord Cottenham L.C. said in *Lloyd -v.- Lloyd*: "If the provisions are clearly expressed, and there is nothing to enable the Court to put upon them a construction different from that which the words import, no doubt the words must prevail ; but if the provisions and expressions be contradictory and if there be grounds appearing on the face of the instrument, affording proof of the real intention of the parties, then that intention prevail against the obvious and ordinary meaning of the words. If the parties have themselves furnished a key to the meaning of the words used, it is not material by what expression they convey their intention." But, a party must not only make out a possible intention favourable to his view, but must also show a reasonable certainty that the intention was such as he suggests.

XX XX XX XX "777. The whole contract is to be considered : Every contract is to be construed with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. "It is a true rule of construction that the sense and meaning of the parties in any particular part of an instrument may be collected exantecedentibuset consequentibus; every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that may be done." And so Lord Davey said in *N.E. Railway v. Hastings*, quoting Lord Watson. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed

if that interpretation does no violence to the meaning of which they are naturally susceptible.

XX XX XX XX 793. Construction against grantor : Another rule of construction is that a deed or other instrument shall be construed more strongly against the grantor or maker thereof. This rule is often misinterpreted. It is only to be applied in cases of ambiguity and where other rules of construction fail.....

xx xx xx xx 801. Time in contracts : Generally, the words "till" and "until" are considered to be ambiguous and may be either exclusive or inclusive according to the subject matter and context: "from" may be taken to be either inclusive or exclusive, although the general rule is that the day of the date, act or event is to be excluded in the computation. This rule, however, is not an absolute one, and the wording of the contract or the intention of the parties may indicate a contrary construction.

"On" and "upon" may mean either before the act done to which it relates, or simultaneously with the act done, or after the act done, according as reason and good sense require."

In more than one case, our Supreme Court or this Court has approved these principles. Bearing these important and other principles, it is necessary to construe clause 10 of the document.

34. Earlier, I have set out the circumstances in which the provision relating to increases and decreases in export duty came to be incorporated and the clause also in its entirety.

35. Undoubtedly the new clause seeks to regulate the increases and decreases in export duty that were not known to the parties on the date of auction or thereafter from the date of auction but within a certain period stipulated in that clause. So far as increases, there is an express stipulation to the effect that such increases should cover the date of auction also. But, in the very succeeding subpara of the para relating to decreases, the words "including the date of auction" are not found, though that also stipulates that the same should be reckoned "from the date of auction" within the stipulated period. According to the Petitioners, this omission to include was deliberate and was in consonance with the general principle of allowing the buyer to retain the benefits of" decreases in taxes.

36. In my considered opinion the omission of the words "including the date of auction" in the subpara of the para relating to decreases in the export duty is not deliberate but is a sheer accidental omission that was never intended and cannot, therefore, be interpreted in the manner suggested by the Petitioners. Even in the absence of the words "including; the date of auction" in the subpara relating to decreases, the; words "from the date of auction", in the context must be interpreted as including the date of auction and cannot be interpreted as excluding that date at all. The word "from" occurring in the clause relating to

decreases must be interpreted as "beginning at" or "a starting point in measuring" they being one of the appropriate meanings ascribed to that term in the standard dictionaries like Oxford and Webster's and as including of that day or date also and not as excluding the same. Any other construction will rob the meaning of the terms "from the date of auction" and will do violence to those terms in the context. For all these reasons, I reject this contention of the Petitioners.

37. Sri Babu has also urged that even if there was any merit in any of the contentions of the Petitioners these are fit cases in which this Court should decline to exercise its extraordinary jurisdiction in their favour which was naturally opposed by the Learned Counsel for the Petitioners.

38. In offering the "Reserve Price" almost at which rate the Petitioners have purchased coffee on 18-5-1977, the Board was influenced by the higher export duty that prevailed then. If the Board was aware of the reduction in export duty, it would have undoubtedly stipulated a higher reserve price. Both parties proceeded on a fact situation that was not known to them then. After all the Board is only asking the Petitioners to discharge their obligations in terms of the contract. But, these Petitioners who do not believe in sharing the burdens and have only benefits for themselves, are seeking the aid of equitable jurisdiction of this Court, which on any principle cannot be extended in their favour.

39. When there was an unprecedented increase in export duty on 6-11-1976 the Board was compelled to defray an amount of Rs. 313/- lakhs to the exporters some of whom would have been the Petitioners themselves (vide para 15 of the statement of objections). The Petitioners believe and practise of having all benefits from the Board and avoid somewhat unjustly all their burdens. After all the contractual obligations are reciprocal and the Petitioners cannot avoid meeting the burdens imposed on them by the terms of the contract. On this short ground this Court should decline to assist the Petitioners.

40. Even assuming that there is any merit in their technical contentions, in such an event also, having regard to all the facts and circumstances, these are fit cases in which this Court should decline to assist the Petitioners.

41. On the above discussion, it follows that these Writ Petitions are liable to be dismissed. Whether these Writ Petitions should be dismissed with costs or not and if so, with what costs is the only other question that calls for my examination.

42. In the normal circumstances the petitioners in all these cases which were heard together should be ordered to pay one set of Advocate's fee to the respondent. But, that principle cannot be properly applied in these cases. In my view, each of the Petitioners should be directed to pay Advocats's fee separately to the respondent and two of them, whose cases, I will presently show should be even ordered to pay exemplary costs for the special reasons to be found against them. The Petitioner in Writ Petition No. 6993 of 1977 has withheld the payment of Rs, 21,91,050/- under the cover of the stay order from about 17-8-1977

which I have now found was without justification. I, therefore, consider it proper to direct the Petitioner in Writ Petition No. 893 of 1977 to pay exemplary costs of Rs. 1,090/- to the respondent. So also the Petitioner in Writ Petition No. 461 of 1979 has withheld payment of a sura of Rs. 3,43,825/- from 31-1-1979 by atleast furnishing bank guarantee for the same. In this view, it is proper to direct this Petitioner to pay a sum of Rs. 300/- as Advocate's fee to the respondents. In all the other cases, who have rightly made payments but are only demanding for refunds probably encouraged by the filing of Writ Petitions Nos. 6893 of 1977 and 461 of 1979, I consider it proper to direct each of them to pay Rs. 250/- as Advocate's fee to the respondent.

43. In the light of my above discussion, I make the following orders and directions:

(a) I dismiss all these Writ Petitions and discharge the rule issued with costs of the respondent, Advocate's fee Rs. 1,000-00 and Rs. 500-00 in Writ Petitions Nos. 6893 of 1977 and 461 of 1979 respectively and Rs. 250/- in each of the other Writ Petitions.

(b) With the dismissal of these Writ Petitions, it is open to the Respondent to recover the amounts due to it against the security offered by the petitioner in Writ Petition No. 6893 of 1977 and the bank guarantee furnished by the petitioner in Writ Petition No. 461 of 1979 and otherwise also in accordance with law.

WRIT PETITIONS NOS. 6893 OF 1977 AND 461 OF 1979 ORDER ON ORAL APPLICATION FOR STAY

In the order just now pronounced by me, I have dismissed these Writ Petitions. With the dismissal of these Writ Petitions, the earlier interim orders stand terminated. In this view, Sri S. Ramaswamy Iyengar, Learned Counsel for the Petitioners prays for stay of operation of my order for a period of three weeks from this day.

Sri R. J. Babu, Learned Counsel for the respondents, opposes grant of stay.

An appeal lies against my order as of right both on questions of fact and law. When that is so, it would be proper to stay operation of my order for a period of three weeks. I, therefore, stay operation of my order in W.P. Nos. 6893 of 1977 and 461 of 1979 for a period of three weeks from this day.