Supreme Court of India
Dhanyalakshmi Rice Mills Etc vs The Commissioner Of Civil ... on 16 February, 1976
Equivalent citations: 1976 AIR 2243, 1976 SCR (3) 387
Author: A Ray
Bench: Ray, A.N. (Cj)

PETITIONER:
DHANYALAKSHMI RICE MILLS ETC.

Vs.

RESPONDENT:
THE COMMISSIONER OF CIVIL SUPPLIES AND ANOTHER

DATE OF JUDGMENT16/02/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SARKARIA, RANJIT SINGH
SHINGAL, P.N.

CITATION:
1976 AIR 2243 1976 SCR (3) 387
1976 SCC (4) 723

ACT:
Practice and Procedure-Representation by millers for permission to export rice-Permits granted on payment of surcharge to meet expenses of administrative machinery set up to ensure export-Writ of mandamus to refund money collected-When may be issued by this Court.
Indian Contract Act (9 of 1872), s. 72-scope of.

HEADNOTE:
The respondent-State Government was exercising powers delegated to it by the Central Government under the Essential Commodities Act, 1955. It introduced an 'Incentive Export Scheme' under which, millers, who delivered 50% of their purchases to the Food Corporation of India towards mill levy, would be eligible for exporting rice either within the State from one block to another or to States outside. On payment of administrative charges. On the representation of the millers (appellants) that they could not sell rice locally because there was no demand, and that unless they were allowed to move rice outside the blocks or outside the State there would be deterioration of stocks resulting in loss to both trade and the consuming public,

the State passed orders permittion the export of rice subject to the fulfilment of their commitments to the Food Corporation and the payment of administrative charges; and also set up the necessary administrative machinery for ensuring such export. Permits were accordingly granted on terms and on condition of payment of the surcharge fixed. and the millers paid the surcharge and received the benefits under the permits. Thereafter, they claimed refund of the administrative surcharge on the ground that the State had no right to collect it and that they made the payments under mistake of law. Where the State collected administrative charges but could not grant permits, the State refunded the money, but, where millers obtained permits and had taken advantage thereof, the State contended that there was no mistake on the part of the millers and that the payments were made voluntarily with full knowledge of facts and in discharge of their contractual obligations.

The millers filed writ petitions praying for directions to the State to refund the administrative surcharges collected from them, but the High Court held that they were not entitled to the relief on the grounds of delay, insufficiency of particulars regarding expenses and charges incurred by the Government, and the payments being voluntary.

Dismissing the appeals to this Court,

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HELD: The petitions were rightly dismissed by the High-Court. Also, since various question of fact are involved as to whether there was really a mistake, or whether it was a case of voluntary payment pursuant to contractual rights and obligations. the remedy under Art. 226 is not appropriate in the present cases. [396C-D]

(a) A mandamus will go where there is a specific legal right. If there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done. A writ of mandamus for recovery of money could be issued only when the petitioner was entitled to recover that money under some statute. An order for payment of money may sometimes be made to enforce a statutory obligation. A mandamus for refund of tax could be issued when the assessments were held to be illegal; but contractual obligations cannot be enforced through a writ of mandamus. Normally, the parties are relegated to a suit of enforce civil liability arising out of a breach of contract or a tort, to pay an amount of money. Mandamus may also be refused where there is an alternative remedy which is equally convenient, beneficial and effectual

[395F-396C]

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R. V. Bristol and Exeter Railway Co. 1845(3) Ry. & Can. Cas. 777; Lekh Raj v Deputy Custodian, [1966] 1 S.C.R. 120. Har Shankar & ors. v. Deputy Excise and Taxation Commissioner & Ors., A.I.R. 1975 S.C. 1121; Sales Tax

officer Banaras & ors. v. Kanhaiya Lal Mukundalal Saraf, [1959] S.C.R. 1350; Suganmal v. State of Madhya Pradesh & ors., A.I.R. 1965 S.C. 1740; Burmah Construction Co. v. State of Orissa, [1962] Supp. 1 S.C.R 242 and State of Kerala v. Aluminium Industries Ltd., 16 S.T.C. 689, referred to.

(b) The ground of delay on which the High Court, in the exercise of its discretion, refused to grant a mandamus is not confined purely to the period of limitation. Though some of the petitions were filed within 3 years from the date of payment, the delay is bound up with matters relating to the conduct of parties in regard to payments pursuant to agreements between the parties.

[395B-C]

(c) In the present cases, several petitioners have joined in the writ petitions. Since each has an individual and independent cause of action, such a combination would be open to the objection of misjoinder even in a suit.

[395C-D]

(d) The issues regarding limitation, estoppel and questions of fact in ascertaining the expenses incurred by the Government for administrative purposes of the scheme and allocating the expenses with regard to the quality as well as quantity of rice covered by the permits, are triable more appropriately in a suit.

[395D]

(e) The plea of mistake is a bare averment in the writ petition. The payments did not disclose the circumstances under which the alleged mistake occurred nor the circumstances in which the legal position became known to the millers. Whether there was a mistake in paying the amounts and when exactly the mistake occurred, are also issues triable in a suit.

[1396D-E]

(f) The Government did not support its demand for administrative charges either as a tax or a fee, but as a condition of the permit and as a term of agreement between the parties to meet the maintenance and supervision ex penses for the Scheme of export permits. Under s. 72 , Contract Act, 1872 if one party, under a mistake of law, pays to another money which is not due by contract or otherwise, that money has to be repaid. The mistake is material only so far as it leads to the payment being made without consideration. But if a mistake of law had led to the formation of a contract. s. 21 of the Contract Act enacts that such a contract is not, for that reason, voidable; and if money is paid under that contract, it cannot be said that the money was paid under mistake of law. It was paid because it was due under a valid contract, and if it had not been paid, payment could have been enforced.

[396E-397A]

The State of Kerala etc. v. K. P. Govindan Tapioca

Exporter etc. [1975] 2 S.C.R. 635; State of Madhya Pradesh v. Bhailal Bhai [1964] 6 S.C.R. 261 and Shiba Prasad Singh v. Srish Chandra Nandi, 76 I.A. 244, referred to.

(g) Where the High Court has, in the exercise of its discretion refused to grant a writ of madamus, this Court does not ordinarily interfere

[394E]

Municipal Corporation of Greater Bomboy v. Advance Builders (India) Private Limited. [1972] I S.C.R. 408 at p. 420 and D. Cawasji d Co. v. State of Mysore [1975] 2 S.C.R. 511 at p. 527, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals No. 2390- 2391 of 1972.

(From the Judgment and order dated 27-3-1972 of the High Court of Andhra Pradesh in Writ Petition Nos. 3976-3977 of 1971.) Civil Appeal No. 604 of 1975 (From the Judgment and order dated 28-3-1973 of the Andhra Pradesh High Court in Writ Petition No. 685/72).

Civil Appeals Nos. 2423-2437 (From the Judgment and order dated 27-3-1972 of the Andhra Pradesh High Court in Writ Petitions Nos. 3974, 3975, 3978, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4247, 4246, 4248, 4249 and 5779/71).

Civil Appeal Nos. 2584-2586 of 1972 (From the Judgment and order dated 28-3-1972 of the Andhra Pradesh High Court in Writ Petition No. 606 and 620, 622/72). Civil Appeals Nos. 281-286of 1973 (From the Judgment and order dated 28-3-1972 of the Andhra Pradesh High Court in Writ Petitions Nos. 4642, 4643, 4644, 4701, 4702 and 5776 of 1971) Civil Appeals No. 539-540 of 1973 (From the Judgment and order dated 27.3.1972 of the High Court of Andhra Pradesh in Writ Petition NOS. 5170, 5173/71).

Civil Appeals No. 2019-2034 of 1973.

(From the Judgment and order dated 28.3.1972 of the Andhra Pradesh High Court in Writ Petitions Nos. 4512, 4588, 4589, 4590, 4591, 4679, 4683, 4684, 4690, 4943, 4953, 4983, 5115, 5117 and 5118 of 1971) Civil Appeal No. 653-662/74 (From the Judgment and order dated 28.3.1972 of the High Court of Andhra Pradesh in Writ Petitions NOS. 603, 607, 609, 621, 627, 629, 738, 739, 744 and 746/72). Civil Appeals NOS. 637, 1837-1842 of 1973. (From the Judgment and order dated 27.3.1972 of the Andhra Pradesh High Court in Writ Petitions NOS. 343/72 and 5669/71, 254, 256, 260, 334, 562/72).

A. K. Sen, for the appellants in CAs 2390-2391 & 2423- 2437/72.

P. A. Chowdhary, for the appellants in Cas 2019- 2034/73.

N. Bhaskar Rao, for the appellants in CAs 2390-2391, 2423-2437/72.

B. Kanta Rao, for all the appellants.

A. K. Sen with S. Markandeya and N. Madhusudan Raj, for the appellants in CAs 604/75, 2584-2586/72 and 653-662/74. H A. K. Sen with N. Madhusudan Raj and G. N. Rao, for the appellants in CAs 281-286/73.

P. Ram Reddy with P. P. Rao, for the respondents in CAs 2390 2391 & 2423-2437/72, 281-282, 539, 540, 2019-2034/73; rr. 2-4 in CA No. 664/75, 653-662/74 and 2584-2586/72; rr. 1-3 in CA 1042/73 and for rr. in CA 636/73. 1837-1841/73.

P. P. Rao for Respondent No. 1 in CA 604/75.

S. P. Nayar and Girish Chandra for respondent No. 1 in CAs 653-662/74 & rr. in CAS 2584-2586/72.

The Judgment of the Court was delivered by RAY, C.J. These appeals are by certificate from the common judgment dated 27 March, 1972 of the Andhra Pradesh High Court dismissing the writ petitions of the appellants.

The appellants filed the writ petitions for an appropriate writ or order directing the respondent State of Andhra Pradesh to refund the sums of money collected from the appellants as administrative surcharges.

The appellants are dealers in foodgrains and held licences issued in accordance with the provisions of relevant statutes and control orders.

Under the provisions of the Essential Commodities Act, 1955 various Control orders have been issued for maintaining or increasing supplies of any essential commodity or for securing their equitable ` distribution and availability at fair prices. The Control orders contemplate regulation or prohibition or production, supply and distribution of essential commodities and trade and commerce therein.

The State Government exercising powers delegated to it by the Central Government in accordance with the provisions of the Essential Commodities Act issued several measures to achieve the objectives of the Control orders.

The Government of Andhra Pradesh introduced a scheme known as "Incentive Export Scheme". Under that Scheme all millers who delivered 50 per cent of their purchases to the Food Corporation of India towards mill levy would be eligible for export under the Scheme. Incentive export permits were to be granted in the ratio of 2: 3. The ratio meant that if a miller delivered two additional wagons to the Food Corporation of India he would be entitled to export three wagons on private trade account. The last date for delivering rice to the Food Corporation of India was fixed as 20 May, 1971. The last date for issue of permits was fixed as 31 May, 1971.

Permits were of four types. The A type of permits was for export from one block to another within the State. Under these permits administrative charge were Rs. 2.50 per quintal. The type of permits was for export from the State of Andhra Pradesh to other States in the South. The administrative charges under the type permits were RS. 10/- per quintal. The type permits was for export to any State outside Andhra Pradesh. The administrative charges for type permits were RS. 8/- per quintal. The fourth type of permits was for export of broken rice under the A type or the A type permits and the surcharges were Re. 1.00 per quintal.

By an order dated 24 July, 1967 under section S of the Essential Commodities Act, l955 the Central Government directed that the powers conferred on it by section 3 (1) of the Essential Commodities ` I Act, 1955 to make orders to provide for matters specified in clauses (a), (b), (c), (d),

(e), (f), (h), (i) and (j) of sub-section (2) thereof shall, in relation to foodstufls be exercisable also by a State Government subject to the conditions (1) that such power shall be exercised by a State government subject to such directions, if any, as may be issued by the Central Government in this behalf, and (2) .- that before making any order relating to any matter specified in clauses (a) and

(c) or in regard to regulation of transport of any foodstuffs under clause (d) of section 3 (2) of the Essential Commodities Act, the State Government shall also obtain prior concurrence of the Central Government.

By an order dated 30 September, 1967 in exercise of powers conferred by section S of the Essential Commodities Act the Central .- Government made an amendment to the order dated 24 July, 1967. The amendment was to the effect that before making an order relating to any matter specified in clauses (a), (c) and (f) or in regard to t distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under clause (d) the State Government shall obtain the prior concurrence of the Central Government.

The State of Andhra Pradesh by an order dated 22 July, 1968 pursuant to the representation of the millers for export of rice outside the block but within the State passed orders that permits for export of rice would be issued subject to the fulfilment of their commitments and that administrative charging of Rs. 2.50 per quintal of rice would be collected from the millers before the issue of permits.

Under the Southern States (Regulation of Export of Rice) (Order, 1964, Andhra Pradesh Rice and Paddy (Restriction on Movement) order 1965 and the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale order, 1967 every dealer or miller was required to supply a minimum quantity of rice to the State Government or its nominees and the balance, that is to say levy free rice, could be sold in the open market or exported to the places outside the block or State under permit issued by the State Government. The representation of the millers for permission to export rice outside the block or the State was that the denial of permission to export rice would result in deterioration of stocks and consequential loss to both the trade and consuming public.

The appellants applied for and obtained permits by fulfilling two principal conditions. One was to satisfy the statutory requirements of supply to the Food Corporation of India and the another was payment of administrative surcharges for every quintal of rice.

In the petitions before the High Court the appellant alleged that they paid the surcharge under "trying circumstances", "mistaken belief and impression" that "the respondent has the right to collect the surcharge". The appellants also alleged that having come to know about the correct legal position in the matter they asked the respondents to refund the administrative surcharges. The respondents refused to refund any administrative surcharge.

The appellants contended in the petitions that the respondent Government has no right to collect any administrative surcharge, and, therefore the amount should be refunded. The appellants alleged that they made the payments under mistake of law.

The High Court held that the levy of administrative surcharge is not backed by valid legislative sanction". The High Court said that the agreements between the State and the appellant millers for export were an executive scheme undertaken by the State but liability to pay tax must be covered by the statute. The High Court expressed the view that there could be no estoppel when both parties are under a mistake of law.

The High Court however hold that the appellants were not entitled to any relief on three grounds. First, the administrative surcharges were paid voluntarily by the appellants. The appellants themselves represented for issue of permits. The appellants obtained the permits. They exported rice under the permits. The High Court, therefore, held that the appellants cannot claim refund of the entire amount without giving due credit for the expenses or charges incurred by the Government for the issue of permits and for the supervision of export, transport and other administrative charges. The second reason given by the High Court was that the Court would not be justified in exercising discretion in favour of the appellants who voluntarily paid the administrative charges, obtained the permits and derived considerable profits therefrom. The third reason given by the High Court was that there was undue delay in claiming the refund.

The appellants contended that the three grounds on which the High Court dismissed the writ petitions were unsustainable. It is said on behalf of one of the appellants (Civil Appeals No. 2584 to 2586 of 1972) that in their application dated 10 February, 1970 for refund of charges paid by them the appellants gave particulars of payments showing the dates of payment, quantity covered by the permit, the amount of charges paid, the number of permit against which payment was made as well as the challenge under which the payment was made Thereafter the appellants called upon the Collector to furnish copies of regulations under which surcharge was collected. The Collector by letter dated 28 July 1970 informed the appellants that the State Government alone was competent to give the copy of the relevant rule or regulation under which surcharge was collected. The appellants referred to the letters dated 22 December, 1970 and 2 January, 1971 by which the State Government refused to grant certified copy of the rule or regulation on the ground that it was part of the official correspondence not meant to be supplied to the private party. In this back ground the appellants contended that since 10 February, 1970 when the appellants demanded refund the

appellants from time to time made application for refund and the last reminder was on 30 December, 1971. Some of the appellants filed their writ petitions in the High Court in the month of September, 1970 and some of them filed A, their writ petitions in the month of January 1972. It was, therefore, said that The applications for refund were all made within three years from the date of payment and the High Court should not have dismissed the writ petitions on the ground of delay.

The appellants next contended that the pleadings were not vague and the appellants in Civil Appeals No. 2584 to 2586 of 1972 gave B. all details of the payments and, therefore, the High Court should not have dismissed the writ petitions on the ground of vagueness of particulars and pleadings.

It was also said on behalf of the appellants that if the levy as well as collection of administrative surcharges was without authority of law the High Court was in error in refusing any relief to the appellants on the ground that the payments were voluntarily made.

The appellants relied on the decision of this Court in The State of Kerala etc. v. k-. P. Govindan Tapioca Exporter etc.(l) as an authority for the proposition that the levy of administrative surcharge is illegal. In the Tapioca case (supra) under the Kerala Tapioca Manufacture and Export (Control) order, 1966 no person could export tapioca except in accordance with permit. The State Government Levied administrative surcharge under a scheme. The State contended that the administrative surcharge was in effect and substance a licence fee charged in exercise of the police powers of the State for permitting the appellants by grant of permits to export tapioca. This Court held that the scheme was not an order under any of the provisions of the Essential Commodities Act and no licence fee or fee for grant of permit was imposed by the Kerala Tapioca Control order. The E. Kerala Tapioca Control order only provided for levy of administrative surcharge. The Kerala Tapioca Control order came into existence on 9 June, 1966. Even before the promulgation of the order administrative surcharge was levied under a scheme formulated by the State Government on 15 April, 1966 published in the Kerala Gazette on 3 May, 1966. The rate of administrative surcharge levied on tapioca under the scheme dated 15 April, 1966 varied from time to time. This Court found that the order dated 15 April, 1966 formulating the scheme was not an order under any of the provisions of section 3 of the Essential Commodities Act. The Scheme did not impose any licence fee. The scheme merely provided for levying of administrative surcharge. The orders levying administrative surcharge which followed the Tapioca Control order did not refer to the exercise of any power under the order. Therefore, this Court held that G. the administrative surcharge in the Tapioca case (supra) was bad and the realisations were without any authority of law.

The appellants contended relying on the decision of this Court in State of Madhya Pradesh v. Bhailal Bhai(2) that the High Court in exercise of powers under Article 226 has power to order refund and repayment of tax illegally collected. The appellants submitted H: that the State had no power under any statute or any authority to (1) [1975] 2 S.C.R. 635 (2) [1964] 6 S.C.R 261 impose and collect administrative surcharge and, therefore, the payments which were made by the appellants were made under mistake of law and the State was liable to refund them. The appellants contended that the administrative surcharge was neither in the nature of a fee nor was it a tax and there was no authority of law to support the levy and collection of administrative surcharge. It was said on behalf of the appellants that neither the Essential commodities Act, 1955 nor the Southern States

(Regulation of Export of Rice) order, 1964 nor the Andhra Pradesh Rice and Paddy order, 1965 nor the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale) order, 1967 conferred any power to levy administrative surcharge.

The respondents contended that the permits were granted pursuant to the representation of the appellants that unless they were allowed the movement of rice to places outside their blocks or outside the State they could not sell rice locally because there was no demand. The respondents further said that for ensuring export of rice the administrative machinery had to be set up. The permits were grant ed on terms and conditions of payment of surcharge and the appellants voluntarily paid surcharge and received benefits under permits. The respondents also said that the permits were contractual obligations between the appellants and the respondents.

The High Court in exercise of its discretion refused to grant mandamus on a consideration of facts and circumstances of the case. The two principal matters which weighed with the - High Court are these. First, the appellants voluntarily paid the amounts and derived full advantage and benefit by utilizing the permits. Second, there is undue delay in claiming refund. Where the High Court has in exercise of discretion refused to grant a writ of mandamus, this Court does not ordinarily interfere. (See Municipal Corporation of Greater Bombay v. Advance Builders (India) Private Limited;(l) D. Cawasji & Co, v. State of Mysore.(2) Refund of illegal taxes stands on a different footing from claiming refund of surcharge paid under terms and conditions of permits. The only basis of tax is legislative sanction and if the legislative sanction fails, the collection of tax cannot be sustained. In the present case the claim for refund is to be judged between the rival contentions. The appellants contend that there is no legislative sanction for collection of administrative surcharge. The respondents on the other hand support the collection of administrative surcharge first as a condition for permit and second as an item of maintenance charges in the maintenance and supervision of the scheme for export of rice.

The respondents also contend that the appellants have no right to claim refund under section 72 of the Indian Contract Act because the payments were neither under mistake of law nor under coercion. It is said by the respondents that there is no coercion because the export scheme was voluntary. Again, it is said that there is no mis take because the payments made were in fact due as part of the export scheme initiated at the instance of the appellants. The respondents deny the claim of the appellants on the further ground that the (1) [1972] 1 S.C.R. 408 at p. 420. (2) [19751 2 S.C.R.

Sl I at p. 527 appellants having derived the benefit and caused detriment to the A Government are estopped from questioning the validity of the payments voluntarily made. Another ground on which the respondents challenge the claim of the appellants is that the payments were part of the consideration of the agreement entered into by the appellants with State. If it be assumed that the agreements are illegal, the respondent contends that the appellant being a party to the same cannot sue for recovery of money paid.

All the matters were covered by the common judgment. In some cases the claims were beyond three years from the date of the payments. In some cases they were within a lesser time but the ground of delay on which the High Court exercised discretion is not confined L purely to period of limitation

but is bound up with matters relating to conduct of parties in regard to payments pursuant to agreements between the parties.

The remedy under Article 226 is not appropriate in the present cases for these reasons as well. First, several petitioners have joined. Each petitioner has individual and independent cause of action. A suit by such a combination of plaintiffs would be open to misjoinder. Second, there are triable issues like limitation, estoppel and questions of fact in ascertaining the expenses incurred by the Government for administrative surcharges of the scheme and allocating the expenses with regard to quality as well as quantity of rice covered by the permits.

The appellants contended that in all cases of claim for refund of money, the payments were voluntary and, therefore, the High 3 Court was in error in refusing refund because of the voluntary character of payment. In cases relating to refund of payments of tax which is illegal the voluntary character of payment is that tax payer has no say but is compelled to pay. In the present cases the questions are whether it can be said that payments of administrative charges were voluntary in order to reap benefits of export of rice covered by the permits. The contention of the respondents that the export scheme was framed at the instance of the appellants and that the administrative surcharge is the consideration for preparation, maintenance and supervision of the scheme raises questions which can be solved by a suit. A mandamus will go where there is a specific legal right. Mandamus may be refused where there is an alternative remedy which is equally convenient, beneficial and effectual. If there is no other means of obtaining justice, the writ of mandamus is grant ed to enable justice to be done. Those are cases where justice can not be done unless a mandamus is to go. R. V. Bristol and Exeter Railway Co.(l) is an authority for the proposition where the Corporation could be compelled to pay a sum of money pursuant to an agreement which could not be enforced by action because the agreement was not under seal. This Court in Lekh Raj v. Deputy Custodian(2) and Har Shankar & Ors. v. Deputy Excise and Taxation Commissioner & ors.(8) held that contractual obligations cannot be enforced through a writ of mandamus.

(1) 1845 (3)(1) 1845(3)Ry. & Can. Cas. 777. (2) 11966] I S.C.R. 120.

(3) A.I.R. 1975 S.C. 1121.

The view of this Court in Sales Tax officer, Banaras & ors. v A Kanhaiya Lal Mukundalal Saraf(1) was that a mandamus could be issued when the assessments were found to be illegal. In Suganmal v. State of Madhya Pradesh & ors.(2) this Court said that the mandamus for recovery of money could be issued only when the petitioner was entitled to recover that money under some statute. In Burmah Construction Co. v. State of Orissa(8) this Court said that normally the parties are relegated to a suit to enforce civil liability arising out of a breach of contract or a tort to pay an amount of money. An order for payment of money may sometimes be made to enforce a statutory obligation. In the State of Kerala v. Aluminium Industries Ltd.(4) the refund claimed was by reason of the moneys being paid under mistake of law and the collection having been made wrongly. The petitions solely for the writ of mandamus directing the State to refund the moneys in the present case have been rightly refused by the High Court on the grounds of delay, insufficiency of particulars and pleadings, and voluntary payments. The additional reasons in our opinion are that various questions

of fact arise as to whether there was really mistake or it was a case of voluntary payment pursuant to contractual rights and obligations.

The plea of mistake is a bare averment in the writ petitions. The payments did not disclose the circumstances under which the alleged mistake occurred and the circumstances in which the legal position became known to the appellants. The respondents contradicted the plea of mistake. A triable issue arose as to whether there was a mistake in paying the amounts and when exactly the mistake occurred and under what circumstances.

Section 72 of the Contract Act states that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. The mistake is material only so far as it leads to the payment being made without consideration. This Court has said that the true principle is that if one party under a mis take of law pays to another money which is not due by contract or otherwise that is to be repaid. When there is a clear and unambiguous position of law which entitles a party to the relief claimed by him equitable considerations are not imported. A contract entered into under a mistake of law of both parties falls under section 21 of the Contract Act and not section 72. If a mistake of law had led to the formation of a contract, section 21 enacts that the contract is not for that reason voidable. If money is paid under that contract, it cannot be said that the money was paid under mistake of law; it was paid because it was due under a valid contract and if it had not been paid payment could have been enforced. (See Shiba Prasad Singh v. Srish Chandra Nandi(5) See also Pollock & Mulla-Contract Act 9th Ed. by J. L. Kapur pp. 519-520). In the present case, the respondents do not support the demand for administrative charges either as a tax or as a fee but as a term and condition of permit and as a (1) [1959] S.C.R. 1350. (2) A.I.R. 1965 S.C. 1740. (3) [1962] Supp. 1 S.C.R. 242. (4) 16 S.T.C. 689.

(5) 76 I.A. 244.

term of agreement between the parties for the maintenance and supervision expenses for the scheme for export permits of rice from one block to another within the State or outside the State.

It may be stated here that in cases where the State collected administrative changes but could not grant permits the State refund t ed moneys to such Person. It is only where millers have obtained permits and taken advantage thereof that the State contends that there is no mistake and that the payments were made voluntarily with full knowledge of facts.

For these reasons the appeals are dismissed. If the parties are so advised they may institute suits and all rival contentions would be . open to both parties. Parties will pay and bear their own costs.

V.P.S. Appeals dismissed.
11-L522SCI/76