

(1984) 03 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Special Appeal No. 351 of 1983

Central India Machinery Mfg. Co. Ltd.

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 29-03-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Electricity (Supply) Act, 1948 — Section 61, 62, 63, 66
State Financial Corporations Act, 1951 — Section 25

Citation : (1985) 1 WLN 114

Hon'ble Judges : S.N. Bhargava, J;S.C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—This Special Appeal has been filed against the order of learned Single Judge dated November 3, 1983 whereby the writ petition filed the appellants was dismissed.

2. M/s. Central India Machinery Manufacturing Co. Ltd., appellant No. 1 (hereinafter referred to as "the Cimmoo") carried on business of manufacturing railway wagons at Bharatpur. The Madhya Pradesh State Electricity Board (hereinafter referred to as "the Electricity Board") is an Electricity Board constituted under the provisions of the Electricity (Supply) Act, 1948 (hereinafter referred to as "the Act"). The Electricity Board required wagons for the purpose of transporting coal for its Amarkantak Thermal Power Station and it invited tenders for supply of 20 wagons. The Cimmco submitted its tender and the said tender of Cimmco was accepted and an order for supply of 20 wagons was placed with the Cimmco by the Electricity Board. There after another contract for supply of 30 wagons was placed by the Electricity Board with the Cimmco in relation to Kobra Power Project. According to the appellants the aforesaid contracts for supply of wagons which were entered into by the Cimmco with the Electricity Board contain a Wage Escalation Clause which provides for increase in price in

the event of increase in wages in accordance with a prescribed formula. The case of the appellants is that the Cimmco has supplied 46 wagons to the Electricity Board against both the contracts and although the Electricity Board has paid the price agreed to by it for the said wagons, a sum of Rs. 1,39,11 896/-(principal) excluding Excise and Central Sales Tax, plus interest amount of Rs. 5,89.129/- remains outstanding against the Electricity Board on account of additional amount payable to Cimmco under the wage escalation clause in the two contracts. The case of the appellants is further that the Electricity Board has failed to make aforesaid payment even though the demand was made.

3. The appellants filed a writ petition in this Court against the State of Madhya Pradesh and the Chairman of the Electricity Board where in it was prayed that a notice be issued to the respondents requiring them to produce the annual financial statement which should have been submitted in terms of Section 61 of the Act upto and inclusive of February, 1983 and even thereafter by way of supplementary or additional financial statement, if any, together with the proposals which the Chairman of the Electricity Board had made and the State Government had approved in the matter of making provision for the payment towards the supply of 50 wagons in question to the Electricity Board by the Cimmco. In the said writ petition, it was also prayed that writ of mandamus or direction of alike nature may be issued to the Chairman of the Elec. Board to include in the said financial statements the amount of the entire bills which have to be paid to the Cimmco by Chairman of the Elec. Board upto the moment & those which, are legally payable for the entire contract as soon as the same is fulfilled and completed by the Cimmco. In the writ petition, it was also prayed that a direction of alike or similar nature may be issued to the respondents to make all payments to the appellants of the amounts lawfully indisputably due to them after removing any obstacle or impediment in the matter of making such payment, which arises or may arise by reason of the statutory annual financial statement not being made in accordance with Section 61 of the Act and an a consequence of not being subject to disabilities imposed by Section 62 of the Act.

4. On the said writ petition of appellants, a notice was issued to the respondents requiring them to show cause as to why the writ petition should not be admitted. In response to the said notice a reply was filed on behalf of the respondents where in certain objections were raised with regard to the maintainability of the writ petition. One of the objections that was raised in the said reply to the writ petition was that the right that was sought to be enforced by the appellants in the writ petition was a contractual right and that the said right arising out of a contract, could not be enforced by invoking jurisdiction of this Court under Article 226 of the Constitution and that a civil suit is the remedy for enforcement of the contractual rights. In the said reply the respondents disputed that the amount mentioned by the appellants in the writ petition was payable to them by the Electricity Board.

5. The learned Single Judge by his order dated November, 3, 1983 upheld the

objection with regard to maintainability of the writ petition raised on behalf of the respondents and dismissed the writ petition of the appellants on the view that transaction of supply of wagons was an ordinary transaction covered under the Sales of Goods Act and the relief sought by the appellants was for unpaid price of goods and that such relief, pure and simple, is a matter arising out of a breach of contract for which the only remedy available is a civil suit and such claim cannot come within the purview of;/ the jurisdiction of this Court under Article 226 of the Constitution. Feeling aggrieved by the aforesaid order of the learned Single Judge, the appellants have filed this special appeal.

6. Before we proceed to deal with the contentions of Shri Rangarajan, the learned Counsel for the appellants in support of special appeal, it will be necessary to take note of the preliminary objection that has been raised by Shri Dharmadhikari, the learned Advocate General for the State of Madhya Pradesh with regard to the maintainability of the special appeal. The submission of the learned Advocate General is that the order passed by the learned Single Judge cannot be regarded as a judgment u/s 18 of the Rajasthan High Court Ordinance, and therefore, a special appeal does not lie against the said order. In this connection the learned Advocate General has submitted that a "judgment" u/s 18 of the Rajasthan High Court Ordinance is an order which involves adjudication of the rights of the parties and that in this order dated November, 3, 1983, the learned Single Judge has not adjudicated on the rights of the parties, but has refused to exercise the jurisdiction of this Court under Article 226 of the Constitution on the view that suit was the proper remedy. In support of his aforesaid submission, the learned Advocate General has placed reliance on the observations from the decision of the Full Bench of Nagpur High Court in *Manohar Damodar Bhoot v. Baliram Ganpat Bhoot* AIR 1952 Nag 357, where in the essential requisites and the exact meaning of the word "judgment" as used in the Letters Patent have been defined and which have approved by the Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kama and Anr.* AIR 1981 SC 1986 . The learned Advocate General has also placed reliance on the decisions of the Supreme Court in *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York, , Madan Naik (Dead) by Legal Representatives and Others Vs. Hansubala Devi and Others, and M. Ramnarain Private Limited and Another Vs. State Trading Corporation of India Limited, .* In addition, the learned Advocate General has placed reliance on the decisions of this Court in *Rajputana Cold Storage and Refrigeration Co. Ltd. v. Rani Ajit kunverba and Ors.* AIR (1955) Raj 418 and *Ikram Vs. Union of India (UOI) and Others,*

7. In our opinion there is no substance in the aforesaid preliminary objection raised by the learned Advocate General. The word ""judgment" as contained in Clauses 15, 13 and 12 of the Letters Patent of the Calcutta High Court came up for consideration before the Supreme Court in *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, .* In that case the Supreme Court has taken note of the decisions of the various High Courts on the subject and has observed:

The judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. It certainly involves the determination of some right or liability, though it may not be necessary that there must be a decision on the merits.

In that case the Supreme Court has pointed out that a judgment may be a final judgment which conclusively determines the rights of the parties with regard to all matters in general in the suit or it may be a preliminary or interlocutory judgment by which the right to the relief claimed in the suit is decided but under which further proceedings are necessary before a suit in its entirety can be disposed of. According to the aforesaid decisions an order in order to constitute a judgment must satisfy either of the following two tests: (i) it should determine some right or liability affecting the merits of the controversy between parties; or (ii) it should dispose of or terminate the suit itself on any ground.

8. In *Shah Babulal Khimji v. Jayaben D. Kania and Ors.* (supra), the Supreme Court has categorised judgments into three categories, namely, (a) a final judgment, (b) a preliminary judgment, and c) intermediary or interlocutory judgment. In the said case it has been held that final judgment is a judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves nothing to be decided and that such an order passed by the learned trial Judge indisputably and unquestionably is a judgment within meaning of Letters Patent. The learned Judges have pointed out that preliminary judgment may take two forms. One form of a preliminary judgment is where the trial Judge by an order dismisses the suit without going into the merits but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. It has been held that here also as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger bench. The other form of a preliminary judgments is where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to the maintainability of the suit, e.g. bar of jurisdiction, res judicata a manifest defect in the suit, absence of notice u/s 80 and the like and these objections are decided by the trial Judge against the defendant and the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant, who if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. It has been held that such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger bench. Dealing with the third category of judgment, namely, intermediary or interlocutory judgments, the learned Judges have held that there may be interlocutory orders which also possess the characteristics and trappings of finality in that, the order may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding and

that such an order can be a judgment if its adverse effect on the party concerned is direct and immediate rather than indirect or remote. According to learned Judges every interlocutory order cannot be regarded as a judgment but only that order would be a judgment which decides matters of importance or affects the vital and valuable rights of the parties and which works injustice to the party concerned and such an order must be treated as judgment within the meaning of Letters Patent.

9. Applying the tests laid down by the Supreme Court in *Shah Babulal Khimji v. Jayaben D.Kania and Anr.* (supra), it must be held that the order that has been passed by the learned Single Judge dismissing the writ petition of the appellant falls in the first class of preliminary judgments in as much as by the said order the learned Single Judge has dismissed the writ petition without going into the merits of the case on a preliminary objection raised by the respondents that a writ petition under Article 226 is not maintainable for the reliefs which are prayed in the writ petition. The said order also constitutes a judgment in accordance with the tests laid down by the Supreme Court in *Asrumati Debi v. Kumar Rupendra Deb Raikot and Ors.* (surpa) in as much as by the said order passed by the learned Single Judge puts an end to the proceedings, namely, the writ petition filed by the appellants in so far as the learned Single Judge was concerned.

10. The decisions of the Supreme Court in *Madan Naik and Ors. vs Mr. Hansubala Devi and Ors.* (supra) and *M/s Mr. Ramarain Pvt Ltd. and Anr. v. The State Trading Corporation of India Ltd.* (supra) have no application to the facts of the present case. In *Madan Naik and other v. Mst. Hansubala Devi and Ors.* (supra) the Supreme Court held that an order with regard to abatement of an appeal for non-substitution of the legal representatives of the deceased respondents could not be regarded as a judgment for the purpose of Clause 10 of the Letter Patent of the Patna High Court in as much as there was no adjudication of rights or adjudication of dispute on merits and that under Order 22 CPC abatement takes place on its own force by passage of time. In *M/s M. Ramnarain Pvt. Ltd. and Ors. v. The State Trading Corporation of India Ltd.* (supra) it was held that an order directing payment in instalments which is not incorporated in the decree did not constitute a judgment under Clause 15 of the Letters Patent of the Bombay High Court. The aforesaid decisions have no relevance to the present case. In accordance with the tests laid down by the Supreme Court in *Asrumati Debi v. Kumar Rupendra Deb Raikot and Ors.* (supra) and *Babulal Khimji's case* (supra), it must be held that the order passed by the learned Single Judge dismissing the writ petition, is a judgment for the purpose of section "8 of the Rajasthan High Court Ordinance, 1949 and special appeal is maintainable against the said order of the learned Single Judge. The preliminary objection raised by the learned Advocate General is, therefore, rejected.

11. We may now come to the merits. Before we deal with the contentions urged by Shri Rangarajan, we may mention that the controversy in the present case

relates to two contractors for supply of wagons by the Cimmco to the Electricity Board against which the Cimmco has supplied 46 wagons to the Electricity Board and the Cimmco claims that a sum of Rs. 1,39, 11. 896/- (principal) and a sum of Rs. 5,49,129/- (interest) is payable by the Electricity Board to the Cimmco. The Electricity Board has, however disclaimed its liability for the aforesaid amounts under contrac"s entered into by it with the Cimmco. On the face of it, it appears that the appellants are seeking to enforce the rights under the contracts which were entered into by the Cimmco with the Electricity Board. The learned Single Judge has held that the jurisdiction under Article 226 of the Constitution of India cannot be invoked for the purpose of enforcing rights arising under a contract. Shri Rangarajan has assailed the aforesaid finding recorded by the learned Single Judge. In this connection the first contention urged by Shri Rangarajan was that the appellants are not seeking the enforcement of the contractual rights but the seeking to enforce the statutory obligations that have been imposed on the Electricity Board under Sections 61, 62 of the Act. The aforesaid sections read as under:

61. Annual financial statement.-(1) In February of each year the Board shall submit to the State Government a statement in the prescribed form of the estimated capital and revenue receipts and expenditure for the ensuring year

(2) The said statement shall include a statement of the salaries of members and officers and other employees of the Board and of such other particulars as may be prescribed.

(3) The State Government shall as soon as may be after the receipt of the said statement cause it to be laid on the table of the House, or as the case may be, House of the State Legislature; and the said statement shall be open to discussion therein, but shall not be subject to vote

(4) The Bords shall take into consideration any comments made on the said statement in the State Legislature.

(5) The Board may at any time during the year in respect of which a statement under Sub-section (1) has been submitted, submit to the State Government a supplementary statement, and all the provisions of this section shall apply to such statement as they apply to the statement under the said sub-section

62. Restriction on unbudgeted expenditure (1) Save where in the opinion of the Board circumstances of extreme urgency have arisen, no sum exceeding seventy-five thousand rupees on account of recurring expenditure of exceeding three lakhs or rupees on account of non-recurring expenditure shall be expended by the Board in any year of account unless such sura has been included in a statement submitted under Sub-section (1) or Sub-section (5) of Section 61

(2) Where any such sum is expended under circumstances of extreme urgency it shall be expended in accordance with the regulations made by the Board with the previous approval of the State Government and a report thereon indicating the

source from which it is proposed to meet the expenditure shall be made as soon as practicable to the State Government.

12. Shri Rangarajan has submitted that Section 61 imposes an obligation on the Electricity Board to submit to the State Government, in February of each year, the annual financial statement of the estimated capital and revenue receipts and expenditure for the ensuing year and the State Government is required to cause the said statement to be laid on the table of the House of the State Legislature. Shri Rangarajan has also submitted that u/s 61 a restriction has been placed on the Electricity Board against incurring an expenniture exceeding Rs. 75, 000/- on account of recurring expenditure or exceeding Rs. 30, 0000/- on account of non-recurring expenditure unless such sum has been included in the annual financial statement or statement referred to in Section 61. The submission of Shri Rangarajan is that the real reason why the Electricity Board is not making the payment of the amount due to the Cimmco is that no provision has been made for the aforesaid expenditure in the annual financial statement that was required to be submitted by the Electricity Board u/s 61 of the Act and that the statutory obligation imposed on the Electricity Board u/s 61 of the Act has not been fulfilled. The learned Advocate General has refused the aforesaid submissions of Shri Rangarajan and has invited our attention to paragraph 15 of the reply filed on behalf of the respondents in response to show-cause notice wherein it has been asserted that "The Electricity Board had made appropriate arrangements in Budget for 1981-82 and 1982-83 for various payments as may be legitimately due for the purchases made by the Board and that simply because a provision is made in Budget or it is absent, the appellant will not be entitled to claim the amount from the Board". In the said paragraph of the reply it has further been asserted that there is no statutory liability created on the Board under any Act, particularly Electricity (Supply) Act, to make payments, which are disputed, to the appellants and that if the amount was due and the Board had to pay the same, there were adequate provisions in annual financial statements and that the Electricity Board could have made payments and provisions of Sections 61 & 62 of the Act would not have hampered such payment. In view of the aforesaid averments contained in the reply, the learned Advocate General has submitted that no case of breach of the statutory obligations of the Electricity Board under Sections 61 and 62 can be said to have been made out and the appellants cannot be heard to say that the Electricity Board has committed breach of any of its statutory obligations imposed on it under the Act. In our opinion, the aforesaid contention of the learned Advocate General must be accepted. The provisions contained in Sections 61 and 62 referred to above are intended to enable the State Government as well as the State Legislature to exercise financial control over the affairs of the Electricity Board. The reason being that major part of the finances of the Electricity Board are made available by the State Government by way of subventions, namely, subsidies and grant-in aid u/s 63 of the Act and also by way of loans. Moreover, Section 66 of the Act shows that the loans which are taken by the Electricity Board form other sources are also guaranteed by the

State Government. If Sections 61 and 62 are found to have been enacted with a view to vest financial control over the affairs of the Electricity Board in the State Government and the State Legislature, it must be held that the obligations imposed by those provisions, can only be enforced by the State Government and the said provisions cannot be construed to confer any enforceable right on the appellants. That apart, in the present case we find that the Electricity Board has expressly stated, in its reply, that appropriate provisions had been made in the budget for the years 1981-82 and 1982-83 for various payments as may be legitimately due for the purchases made by the Electricity Board and that if the amount was due and the Electricity Board had to pay the same, there were adequate provisions in the annual financial statement prepared by the Electricity Board and that the Electricity Board could have made payments and that the provisions of Sections 61 and 62 of the Act could not have hampered such payments. The case of the Electricity Board is, however, that the amount claimed by the Cimmco is not payable by the Electricity Board. This would show that the reasons why the amount claimed by the Cimmco has not been paid by the Electricity Board is that the Electricity Board disputes its liability to make the said payment and it cannot be said that the said payment has not been made by the Electricity Board on account of the restrictions that have been placed on the powers of the Electricity Board under Sections 61 and 62 of the Act. In the circumstances, it cannot be said that the Electricity Board has failed to fulfil the statutory obligations imposed on it under Sections 61 and 62 of the Act and that the jurisdiction of this Court under Article 226 of the Constitution can be invoked by the appellants so as to require the Electricity Board to fulfil the obligations imposed on the Board u/s 61 and 62 of the Act.

13. The next contention urged by Shri Rangarajan was that even in respect of rights arising under a contract between a citizen and the State, the remedy under Article 226 of the Constitution can be invoked. In support of his aforesaid submission Shri Rangarajan has placed reliance on the decisions of the Supreme Court in the *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, and State of U.P. Vs. Bahadur Singh and Others*, We are unable to accept the aforesaid contention of Shri Rangarajan. In England the law is well settled (that a writ of *Manadmus* can be issued for the enforcement of public duties by public authorities and that contractual duties are not enforceable by issuing a writ of *Mandamus*. In English Law a distinction is drawn between public law and private law and public duties which arise under the public law can be enforced by issuing a writ of *Mandamus* but duties which arise under private law cannot be enforced by a writ of *Mandamus* and have to be enforced by remedies available in the private law. Duties which arise from a contract form part of the private law and have to be enforced by the ordinary-contractual remedies such as damages, injunction, specific performance and declaration. (See *Wade on Administrative Law*, Fourth Edition pages 597-693). The law in this regard, is no different in India. In *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , it was laid down that any duty or obligation calling upon a

public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution. Similarly in *Banchhanidhi Rath Vs. The State of Orissa and Others*, it was held that if a right is claimed in terms of contract such a right cannot be enforced in a writ petition. To the same effect is the law laid down in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, . In *Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others*, , it was observed as under:

At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellent is that the remedy of Article 226 is unavailable to enforce a contract quo contract We fail to see how supplier of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Article 226 in the event of a breach of contract, by-passing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or Public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction.

In *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, , the Supremecy Court has examined this question at length. In that case it was argued that whenever the State or its agents or officers deal with the citizen, either when making a transaction, or after making it, acting in exercise of powers under terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of "certain legal and public duties". The Supreme Court did not accept this contention and observed that if they were to accept this very wide proposition, every case of a breach of contract by the State or its agents or its officers would call for interference under Article 226 of the Constitution. The Supreme Court held that at the stage of entering into a contract the State acts purely in its executive capacity and is bound by the obligation which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers and the action of the State may be open to challenge on the ground of violation of Article 14 of the Constitution. But after the State, or its agents, have entered into a contract with the citizen, the relations are no longer governed by the Constitutional provisions but by the legally entered contract which determines the rights and obligations of the parties inter-se and that no question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field perform any act, and that in this sphere they can only claim rights conferred upon them by a contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory powers or obligation on the State in the contractual field which is apart from contract. The decision in the *DFO South Kheri and Ors. v. Ram Sanahi Singh* (supra) on which reliance has been placed by Shri Rangrajan,

was noticed by the Supreme Court in Radha Krishna Agarwal's case (supra) and it has been pointed out that in that case although the source of the right was contractual, the action complained of was the purported exercise of a statutory power and, therefore, relief could be claimed under Article 226 of the Constitution.

14. In *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*, the Supreme Court has again reiterated:

Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if the contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the Civil Court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a civil court where a suit for specific performance of contract or for damages could be filed. This is so well settled that no authority is needed.

15. Shri Rangarajan has however submitted that with the expanding horizon of judicial review the position has altered and that the extraordinary jurisdiction under Article 226 of the Constitution can be invoked in every case where a public authority acts arbitrarily or unreasonably in exercise of the powers conferred on it. In support of his aforesaid submission, Shri Rangarajan has invited our attention to the decisions of the Court of Appeal in *O'Reilly v. Mackman and Ors.* and *Ors.* cases (1982) 3 All ER 680 and *Regina v. Boundary Commission for England Exports Foot and Ors.* (1983) 1 All ER 1099. Shri Rangarajan has also placed reliance on certain observations of Prof. H.W.R. Wade in his treatise on Administrative Law (Fifth Edition) and Lord Denning's recent book, "The Closing Chapter".

16. In *O'Reilly v. Mackman and other and other cases* (supra), Lord Denning MR., in his leading judgment has referred to the advances that have been made in the field of Administrative Law during the past few years, as a result of the decision in *R. v. Northumberland Compensation Appeal Tribunal, Ex. P. Shaw* (1952) 1 KB 338 *Barnard v. National Dock Labour Board* (1953) 2 QB 18 and *Anisminic Ltd. v. Foreign Compensation Commission* (1969) AC 147. In this regard Lord Denning has also referred to Order 53 of the Rules of Supreme Court which was introduced in 1977 and Section 31 of the Supreme Court Act, 1981 which came into force on 1st January, 1982 and has observed that as a result of Section 31 of the Supreme Court Act, 1981, judicial review is available to give every kind of remedy and that "it should be normal recourse in all cases of public law where a private person is challenging the conduct of a public authority or a public body, or of anyone acting in the exercise of a public duty. It would thus be seen that in the aforesaid passage Lord Denning has used the words "public law" and "public duty. In the aforesaid decision Lord Denning has also taken note of the distinction between "private law" and "public law" and has observed:

In modern times we have come to recognise two separate fields of law, one of private law, the other of public law. Private law regulates the affairs of subjects as between themselves. Public law regulates the affairs of subjects vis-a-vis public authorities. For centuries there were special remedies available in public law. They were the prerogative writs of certiorari, mandamus and prohibition. As I have shown they were taken in the name of the sovereign against a public authority which had failed to perform its duty to the public at large or had performed it wrongly. Any subject could complain to the sovereign, and then the king's courts, at their discretion, would give him leave to sue such one of the prerogative writs as was appropriate to meet his case. But these writs, as their names show, only gave the remedies of quashing, commanding or prohibition. They did not enable a subject to recover damages against a public authority, nor a declaration, nor an injunction.

According to Lord Denning the aforesaid defect in public law has now been removed by the enactment of Section 31 of Supreme Court Act, 1981.

17. In *Regina v. Boundary Commission for England Exports Foot and Ors.* (supra), the Court of Appeal has held that if Ministers or local authorities exceed the powers that are given to them by Parliament, if they choose to do something or to refrain from doing something in the circumstances in which this is not one of the options given to them by Parliament, the courts can and will intervene in defence of the ordinary citizen. In the said case it has further been held that if public authorities purport to make decisions, which are not in accordance with the terms of the powers conferred on them, such decisions can be attacked in the courts by way on an application for judicial review and further more than even if such decisions on the face of them fall within the letter of their powers, they may be successfully attacked if shown to have been unreasonable. It may, however, be mentioned that the aforesaid observations in *Regina v. Boundary Commission for England* (supra) have also been made in context of public duties falling within the domain of public law, as would be clear from the observation of Lord Denning in his recent book "The Closing Chapter". In the said book at pages 134-135 Lord Denning has dealt with "public law" functions" and has pointed out the difference between public law and private law and has quoted the aforesaid observations from the decision of the Court of Appeal in *Regina v. Boundary Commission for England* (supra). In his aforesaid Book Lord Denning has thus explained the difference between public and private law:

In public law the central principle is that a public authority must properly perform the public function assigned to it by the law. It must not exceed the powers which have been entrusted to it, and it must duly perform the duties which have been laid upon it. If it does not do so, it is acting ultra vires. It can be called to account by any citizen who has a sufficient interest in the matter

In private law there are several principles. In the law of contract a man should keep his promise. In the law of tort a man should take reasonable care not to injure his neighbour. If he does not do so, he is liable in damages by the remedy

of a writ or by an action. And so forth.

18. The observations of Prof. Wade in his treatise on Administrative Law (fifth edition) at pages 632-633, on which reliance was placed by Shri Rangarajan, also recognised this distinction between public and private rights in the context of the writ of mandamus, in these observations Prof. Wade has taken note of changed scope of the writ of mandamus and has pointed out that originally the said writ was used for the enforcement of public duties of all kinds and sometimes it was also used for enforcement of a duty which was neither statutory nor under Royal Charter and that in recent times the writ of Mandamus has acquired a more precise scope than that which Lord Mansfield had advocated and that "mandamus now belongs essentially to public law" and that "it seems safe to say that it would not be granted today to enforce the duties of trustees, even where these are statutory, since for this there are sufficient remedies in private law". According to Prof. Wade today mandamus will not be granted to enforce the private rights of share-holders against companies, though courts entertained such cases previously. Prof. Wade has observed that "within the field of public law the scope of mandamus is still wide and the court may use it freely to prevent breach of duty and injustice". It may also be mentioned that in his aforesaid book, Prof. Wade has distinguished contractual duties and has remarked that a distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract and that contractual duties are enforceable as matter of private law by the ordinary contractual remedies such as damages, injunction, specific performance and declaration and that they are not enforceable by mandamus which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies.

19. This would show that the advancement in the field of judicial review that has been referred to by Lord Denning is in the field of public law and in so far as private law is concerned, the position remains the same and that the remedy of mandamus cannot be invoked in respect of rights arising under the private law. Contract forms part of private law and rights governed by contract even though it is between the State and the citizen will, therefore, be governed by private law and such rights cannot be enforced by mandamus.

20. In support of his submission that there has been a change in the law relating to enforcement of contractual rights by mandamus, Shri Rangarajan has placed strong reliance on the following observations in paragraphs 1) and 12 of the judgment of the Supreme Court in *The Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd.* (supra):

Viewing the matter from a slightly different angle altogether, it would appear that the appellant is acting in a very unreasonable manner. It is not in dispute that the appellant is an instrumentality of the Government, and would be "other authority" under Article 12 of the Constitution. If it be so, as held by this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India* and

Others, , the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance.

Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A position under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12

According to Shri Rangarajan the aforesaid observations of the Supreme Court indicate an expansion in the field of judicial review and that if the State or its officers act arbitrarily or unreasonably in the discharge of constitutional obligations, their action can be challenged in proceedings under Article 226 of the Constitution.

21. We are unable to agree with Shri Rangarajan that the observations of the Supreme Court referred to above in *Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd.* (supra) lead to the inference drawn by him. In the said case the Gujarat State Financial Corporation had sanctioned a loan of Rs. 29.93 lacs to the respondent company for purpose of construction of a Four Star Hotel and on that basis the respondent Company undertook certain obligations and, thereafter, the Gujarat State Financial Corporation decided not to disburse the loan to the respondent company. The respondent company thereupon approached the Gujarat High Court by moving a petition under Article 226 of the Constitution which was allowed by learned Single Judge as well as by division bench of the said High Court and the appeal filed by Gujarat State Financial Corporation was dismissed by the Supreme Court. In the said case the Gujarat State Financial Corporation had opposed the writ petition on the ground that the dispute between the parties was in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Gujarat State Financial Corporation to carry out its part or the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus could not be issued to compel the Corporation, to specifically perform the contract. The aforesaid contention was rejected by the Supreme Court on the view that the agreement to advance loan was entered into in performance of statutory duty cast on the Gujarat State Financial Corporation by the statute under which it was created and set up and that on its solemn promise the respondent Company had incurred expenses and several liabilities to set up a hotel. The Supreme Court held that in the backdrop of this incontrovertible fact situation, the principle of promissory estoppel would come into play and it would

estop the Gujarat State Financial Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent. The observations contained in paras 11 and 12 of the judgment, referred to above, indicate that apart from the principle of promissory estoppel the Supreme Court was also of the view that the action of the Gujarat State Financial Corporation could be open to challenge for the reason that it had entered into a solemn promise in discharge and performance of its statutory duty and the said Corporation could not be allowed to act arbitrarily so as to cause harm and injury flowing from its unreasonable conduct to the respondent company and that in such a situation the court is not powerless from holding the Corporation to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. This would show that the observations contained in paragraphs 11 and 12 of the judgment referred to above have been made by the Supreme Court on the basis that the Gujarat State Financial Corporation had entered into a solemn contract in discharge and performance of a statutory duty and that the Court, in exercise of its jurisdiction under Article 226 of the Constitution, could direct the Corporation to perform its statutory duty. In this regard it may also be observed that the division bench of the Gujarat High Court, after examining the provisions of the State Financial Corporations Act, 1951 whereunder the Gujarat State Financial Corporation was constituted, has held that the Gujarat State Financial Corporation had agreed to advance the loan of Rs. 29 93 lacs to the respondent company in fulfillment of its statutory obligation u/s 25(1)(g) of the said Act and the said finding had not been challenged before the Supreme Court by the Gujarat State Financial Corporation. The aforesaid observations of the Supreme Court contained in paras 11 and 12 of the judgment have, therefore, to be read in the context of the facts of that case and the said observations cannot be construed to mean that in every case where the State or its officers have entered into a contract and the State or its officers act arbitrarily and unilaterally it would be open to one of the contracting parties to approach the the court under Article 226 of the Constitution to require the State to perform its obligations under the contract. In the present case it is not possible to hold that the contracts which were entered into by the Electricity Board with the Cimmco for the supply of wagons for the purpose of carriage of coal for its power projects were entered into by the Electricity Board in discharge of any statutory obligations imposed on the Electricity Board by any statutory enactment. The present case cannot, therefore, be equated with the case of the Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt Ltd. (supra) and on the basis of the said decision it cannot be said that appellants are entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution.

22. Shri Rangarajan has lastly submitted that the learned Single Judge was not right in holding that the appellants have not based their claim on the principle of promissory estoppel. In this regard Shri Rangarajan has invited our attention to paragraph 5 of the rejoinder that has been filed on behalf of the appellants wherein it has been stated that the principle of promissory estoppel would debar

respondent No. 2 i.e. the Chairman of the Electricity Board, from going back on the obligations undertaken, arising out of the solemn promise. Shri Rangarajan has submitted that the Elec. Board by its conduct, in not raising any objections against the bills that were submitted by the Cimmco for the additional amount under the wage escalation clause in the contracts should be treated to have made a representation to the appellants that the said bills would be honoured and that acting on the basis of the said representation of the Electricity Board, the appellants continued to supply the wagons to the Electricity Board and that the Electricity Board is now estopped from disputing its liability for the additional amount under wage escalation clause. In our opinion there is no factual foundation in the pleadings for the aforesaid submission of Shri Rangarajan. In so far as the writ petition is concerned, there is no plea whatsoever for invoking the principle of promissory estoppel. It is true that in paragraph 3 of the rejoinder a reference has been made to the principle of promissory estoppel but there also the factual foundation for such a plea is absent. In the circumstances we are of the opinion that the appellants cannot their case on the principle of promissory estoppel.

23. No other contention was urged by Shri Rangarajan.

24. In the result, we find no force in the special appeal and it is therefore dismissed. The respondents would be submitted to their costs. The cost are assessed at Rs. 1,000/-, (Rupees thousand only).