

(2009) 04 KAR CK 0069
In the Karnataka High Court
Case No : Writ Appeal No. 2755 of 2005

Manjunatha Overseas Granite Ltd.

APPELLANT

Vs

Mysore Minerals Ltd.

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 226

Citation : (2009) ILR (Kar) 2553 : (2009) 5 KarLJ 412 : (2010) 8 RCR(Civil) 2126

Hon'ble Judges : P.D. Dinakaran, C.J;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Kusuma R. Prasad, for L.M. Chidanandayya, for the Appellant;
Chandrakanth R. Goulay and Vidyananda Arali, for the Respondent

Final Decision : Dismissed

Judgement

1. The unsuccessful writ petitioner is the appellant herein who has filed this appeal against the order dated 15.04.2005 made in W.P. No. 15212/2004 refusing to grant issue of mandamus directing the respondents to supply 20000 PDMT iron ore fines of +65% from Subbarayanahalli Iron Ore Mines at Rs. 175/- per PDMT pursuant to the letter of allotment dated 17.11.2003.

2. The appellant-writ: petitioner, in the writ petition sought to quash the order dated 04.02.2004 passed by respondent herein. The said order reads as hereunder:

Sub: Re-allotment of delivery note with respect to Iron ore fines as against the delivery order dated 05.12.2003.

Ref. (1) Your letter dated 14.11.2003

(2) Our letter of intent dated 17.11.2003.

(3) Delivery order dated 05.12.2003.

With reference to the above subject, our company had released 20,000 Mts. Of +65% iron ore fines from our Subbarayanahalli Iron Ore Mine. After receiving Rs. 31.00 lakhs of advance amount as per the letter of intent at Rs. 175/- per PDMT including royalty, FDT, Cess and applicable taxes, the delivery order was issued. While verifying the accounts, the company auditors have pointed out that as per the letter of intent under reference cited 2 above, you were suppose to pay the advance amount within 7 days from the date of issue of letter of intent. But the company has received the advance amount from your end Rs. 15.50 lakhs oh 11.12.2003, Rs. 10.00 lakhs on 12.12.2003 and Rs. 5.5 lakhs on 17.12.2003 amounting to Rs. 31.00 lakhs. In the meantime on 05.12,2003 the company"s existing prices was Rs. 350/-PDMT.

In view of the above, we are re-allocating and releasing a quantity of 8,360 tonnes PDMT of +65% IOF from Subbarayanahalli Iron Ore Mine at the rate of Rs. 35G/- PDMT including royalty, FDT, Cess and applicable taxes instead of 20,000 tonnes.

3. According to the writ petitioner, the respondent having accepted the offer made by the petitioner on 14.11.2003 to supply iron-ore fines at the rate of Rs. 175/- per metric tonne which includes royalty charges, forest development tax, cess and other charges excluding loading charges ought to have honoured the same, as the issuance of the letter of intent dated 17.11.2003 was received by the petitioner on 27.11.2003. Confirming the same, cheques were also issued on 27.11.2003 by the petitioner, which amounts to a concluded contract. Therefore it is contended that the impugned proceedings dated 17.11.2003 and the respondent going back from the earlier commitment and fixing the rate at Rs. 350/- PDMT, is arbitrary and unreasonable. Hence the appellant filed the above writ petition to quash the order dated 04.02.2004 seeking (a) to call for the records which ultimately resulted in passing the order Annexure-A dated 4.2,2004 passed in No. MML/MKT/MOGPL/IOF/03-04/4312 by the respondent; (b) to issue an order, direction of writ in the nature of certiorari quashing the order Annexure-A dated 04.02.2004 passed in No. NIML/MKT/MOGPL/IOF/03-04/4312 by the respondent and (c) to issue an order, direction or writ in the nature of mandamus directing the respondents to supply 2GU00 PDMT of Iron Ore Fines of Plus 65% from Subbarayanahalli Iron Ore Mines at Rs. 175/- PDMT pursuant to the letter of allotment dated 17.11.2003.

4. The respondent herein resisted the above writ petition on the ground as is evident from the impugned proceedings the writ petitioner was supposed to pay an advance amount within seven days from the date of issuance of letter or intent, but the Company has received the from the petitioner advance amount of Rs. 15.50 lakhs on 11.12.2003; Rs. 10.00 lakhs on 12.12.2003 and Rs. 5.50 lakhs on 17.12.2003. Therefore there is an apparent failure on the part of appellant writ petitioner. In view of the above breach of contract, the earlier rate fixed viz., Rs. 175/- PDMT, cease to exist. Since there was an increase in the rate of iron ore fines the respondent by the impugned communication informed that

the appellant writ petitioner could get the iron ore only at the rate of Rs. 350/- PDMT. As there was breach of terms of contract by the appellant-petitioner and on that account the respondent-Corporation which is a public sector undertaking, cannot be made to suffer a loss. That apart the two cheques sent by the petitioner pursuant to the letter of intent dated 17.11.2003 also got dishonoured and in any event the petitioner had not deposited the total advance amount within seven days as per the terms of contract. Time being the essence of the contract, the petitioner having not complied with terms of the contract, is not entitled to claim any relief as prayed for.

5. Appreciating the rival contention, the learned Single Judge by order dated 15.04.2004 held that the contract entered into between the appellant-petitioner and the respondent is purely a non-statutory contract and the same cannot be sought to be implemented by way of writ petition. Consequently the grievance of the appellant that the principles of natural justice was not observed before passing the impugned order also fails.

6. Hence the above writ appeal.

7. Heard both the learned Counsel for the appellants and for the respondents who reiterated the submissions that were made before the learned Single Judge.

8. Concededly, the appellant had not paid the contractual amount pursuant to the letter of intent dated 17.11.2003 in time, as the two cheques sent by the petitioner got dishonoured. As the petitioner failed to deposit the total advance amount within seven days from the date of letter of intent dated 17.11.2003 as per the terms of the contract, he has committed a breach of the contract, as the time is the essence of the contract. That being the factual position, the appellant-writ petitioner cannot at any cost improve his case in the present writ appeal.

9. That apart the decision of the learned Single Judge dated 15.04.2004 is also based on the well settled principles of law laid down by the Apex Court on the point whether the High Court can interfere with the non-statutory contractual obligations entered into between the parties by exercising the power of judicial review under Article 226 of the Constitution of India, as held in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , wherein the following decisions of the Apex Court are referred to in detail:

(i) K.N. Guruswamy Vs. The State of Mysore and Others, .

(ii) Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, .

(iii) State of M.P. v. Thakur Bharat Singh AIR 1967 SC 1170.

(iv) DFO v. Ram Sanehi Singh (1973)3 SCC 864.

(v) Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, .

- (vi) Radhakrishna Agarwal and Others Vs. State of Bihar and Others, .
- (vii) Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, .
- (viii) Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., .
- (ix) Life Insurance Corporation of India Vs. Escorts Ltd. and Others, .
- (x) Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, .
- (xi) Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, .
- (xii) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, .
- (xiii) LIC of India and Another Vs. Consumer Education and Research center and Others, .
- (xiv) C. Ali Vs. State of Kerala, .
- (XV) Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, .
- (xvi) Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, .

10. In ABL International Ltd. (supra) the Supreme Court has demarcated the power of this Court in contractual matters while exercising the judicial review under Article 226 of the Constitution of India as hereunder:

(i) Judicial review is permissible both at the pre contract stage and post contract stage though the scope of interference varies depending upon the stage of review. The scope of judicial review in post contractual matters is very much narrower.

(ii) In pre contract stage the action of the State of its instrumentality has to satisfy the test of reasonableness as enunciated by the Supreme Court In various decisions interpreting Article 14 of the Constitution of India. Action should be fair, just, reasonable and devoid of arbitrariness.

(iii) The pre contract stage squarely falls within the realm of public law character and, therefore, the decision must not only be tested by principles of Wednesbury's principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides.

(iv) Post contract stage falls within the realm of private law. But nonetheless the requirement of Article 14 and contractual obligations are not alien concepts. They can co-exist.

(v) Every holder of a public office by virtue of which he acts on behalf of a State or public body is ultimately accountable to the people in whom sovereignty vests. Therefore, even in this private law sphere when a public officer exercises power it is in the nature of a public duty and, therefore, as his action is in import of public

interest that factor alone is sufficient to import at least the minimum requirements of public law obligations. The requirement of Article 14 being the duty to act fairly, justly and reasonably, such action of a public officer in discharge of public duty should conform to the said requirement of law.

(vi) The order terminating a contract on the ground of breach of terms of the contract is not vitiated for not disclosing the reasons, the application of mind, by way of consideration of the case of the defaulting party. Such an order when challenged in court could be justified by producing the relevant records and showing the application of mind to the said material after following the principles of natural justice which would meet the requirement of law as courts are only concerned with the process of decision making and not the decision itself.

(vii) When some defect is found in the decision making process, the court must exercise its discretionary power under Article 226 with great caution and circumspection and should exercise it only in furtherance of public interest and not merely on the making out a legal point.

(viii) Writ petition against a State and its instrumentality, arising out of contractual obligation is maintainable. Even disputed questions of fact could be gone into, if necessary by recording of evidence. Monetary claims can also be entertained. But the normal rule is not to entertain such claims. But, only in exceptional cases when the circumstances warrant such an interference, the court has the power and could be exercised. In other words, only in rarest of rare cases the exercise of power is justified. It is not want of power or jurisdiction. It is a case of self restraint.

(ix) A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by State or a statutory body.

(x) The interpretation and implementation of a covenant in a contract ordinarily cannot be the subject matter of writ petition, and the same has to be determined according to the principles of the Contract Act.

11. Of course, at this stage, the learned Counsel appearing for the appellant alternatively seeks permission of the Court to withdraw the above appeal for which we do not propose to oblige as the issue involved in the writ appeal is to the very maintainability of the writ petition as discussed by the learned single judge in detail and held as above.

12. The learned Single Judge while dismissing writ petition No. 15212/2004 vide order dated 15.04.2005, has extracted the various decisions of the Apex Court on the point of maintainability of writ petition in the matters of non-statutory contracts. It is apt to extract the reasons that weighed the learned Single Judge, following the decisions of the Apex Court as hereunder:

(i) The Supreme Court in the case of K.N. Guruswamy Vs. The State of Mysore and Others, has held where the source of a right was contractual but the action complained of was the purported exercise of a statutory power, relief could be

claimed under Article 226.

(ii) The Supreme Court in the case of *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, held, Article 14 protects us from both legislative and administrative tyranny of discrimination.

(iii) In *State of M.P v. Thakur Bharat Singh* AIR 1967 SC 1170 it has been held that even executive action must not be exercised arbitrarily but must have the authority of law to support it.

(iv) The Supreme Court in the case of *D.F.O v. Ram Sanahi Singh* 1973(3) SCC 864 held, merely because the source of the right was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority suit is the remedy and not a Writ Petition. Even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power. Writ Petition is maintainable.

(v) In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, it was held, Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. When the State acts to the prejudice of a person, it has to be supported by legality.

(vi) the Supreme Court in the case of *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, held, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. 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. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only.

(vii) The Supreme Court in the case of *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, held the constitutional power conferred on the government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the government must be in public Interest, the government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated.

(viii) In *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, it was held, the State cannot commit breach of a solemn undertaking to the prejudice of the other party which acted under an obligation and put itself in a

disadvantageous position. It cannot be said in such circumstances, the only remedy for the aggrieved party would be suing damages for breach and that it could not compel the Corporation for specific performance of the contract under Article 226.

(ix) A constitution bench of the Supreme Court in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, held, if the action of the State is related to contractual obligation or obligations arising out of the Court, the Court may not ordinarily examine It unless the action has some public law character attached to it. Broadly speaking the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision, and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company, like any other shareholder.

(x) The three Judges Bench of the Supreme Court in the case of Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, held, that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise or discretion or power by public authorities as the respondent in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords must be judged by that standard. If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. Being a public body even in respect of Its dealing with its tenant, It must act in public interest and an Infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction.

(xi) In the case of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, it is held that, there is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple.

(xii) In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the Supreme Court has held that the appointment and its concomitants viewed as

purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action.

The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. The State cannot be attributed the split personality of in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it.

As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good.

(xiii) In *LIC of India and Another Vs. Consumer Education and Research center and Others*, it was held, the arms of the High Court are not shackled with technical rules or procedure. The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision.

(xiv) In the case of *C. Ali Vs. State of Kerala*, the Bench consisting of Two

Learned Judges held Governmental actions are required to be based on standards which are not arbitrary or unauthorised. Even the administrative orders and not (sic only) quasi-judicial are required to be made in a manner of consonance with the rules of natural attributes of the property. While exercising the powers of judicial review the Court can look into the reasons given by the Government in support of its action but cannot substitute its own reasons. The Court can strike down an executive order, if it finds the reasons assigned were irrelevant and extraneous. The courts are more concerned with the decision making process than the decision itself.

(xv) The Supreme Court in the case of *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, held, the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even, when some defeat is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

(xvi) The Supreme Court in the case of *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, held, the interpretation and implementation of a Clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. A statute may expressly or impliedly confer power on a statutory body to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is

a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies like private parties have power to contract or deal with property. Such activities may not raise any issue of public law.

13. Referring all these decisions and the decision of the Apex Court in ABL International Ltd. (supra), the learned Single Judge laid down the following proposition:

25. After reviewing almost all the cases aforementioned, the Supreme Court in recent judgment in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , held that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In an appropriate case the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact. Once the State or an instrumentality of the State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

The Court has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. This plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

26. The propositions of law laid down in the aforesaid cases must be read in the context of facts established in each case. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made therein. Apart from Article 141 of the Constitution of India,

the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of Court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same Court, or in other Courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasion when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. The only thing in a Judge's decision binding as an authority upon a subsequent Judges is the, principle upon which the case was decided. It is unsafe to extract sentence here and there from a judgment and to build upon it. Those words in the said judgments cannot be interpreted as the wordings of the statute. The observations in a judgment have to be understood in the context in which they are made, the subject matter of the proceedings and what exactly the learned Judges intended in making those observations. The generality of the expressions which are found there are not intended to be expositions of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found.

27. From the aforesaid catena of case law it is clear judicial review would apply to the exercise of contractual powers by Government and public authorities in order to prevent arbitrariness or favouritism. It must be remembered the power of the High Court under Article 226 of the Constitution is plenary in nature. No limitations on the exercise of such power is permissible. The limitation is only by way of self restraint. Judicial review is a great weapon in the hands of the Judges, but the Judges must observe the constitutional limits set up by our parliamentary system upon the exercise of this plenary power. Judicial review is not an appeal from a decision but a review of the manner in which the decision was made. The courts do not review the merits of the decision in support of which the application for judicial review is made but, decision making process itself. Judicial review is a protection and not a weapon. Fair play in action is an essential requirement, Similarly, free play in the joints is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. The doctrine that powers must be exercised reasonably has to be reconciled with no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. If the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits.

26. In contractual sphere one has to bear in mind two distinct facets, i.e., before a contract is entered into or a pre-contract stage and a post contract stage. A pre contract stage falls within the public law domain whereas the post contract stage falls within the private law domain. In so far as pre contract stage is concerned, there is no difficulty. It falls within the administrative sphere. The State and all its instrumentalities have to conform to Article 14 of the Constitution of which

non-arbitrariness is a second facet.

29. There is a line of decisions which has taken the view that where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple. The termination of contract is not a quasi judicial act by any stretch of Imagination; hence it is not necessary to observe the principles of natural justice. It is also not an executive or administrative act to attract the duty to act fairly. When the Government is trading with the public, the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. The State has a right to trade. The State there has the duty to observe equality. An ordinary individual can choose not to deal any person. The Government cannot choose to exclude persons by discrimination. When the State acts to a prejudice of a person, it has to be supported by legality. The rights of the parties are governed by contract/agreement between the parties and if there is a breach of the terms of contract it falls within private law field and Writ Petition is not maintainable since it is a public law remedy. Broadly speaking the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field.

30. The interpretation and implementation of a Clause in a contract ordinarily cannot be the subject matter of a writ petition. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act.

14, We are satisfied that the reasons of the learned Single Judge to dismiss the writ petition are well-founded as the same are based in the well settled principles laid down by the Apex Court.

15. We do not see any reason to take an exception to the decision of learned Single Judge. Moreover, we also find that the learned Single Judge while dismissing the writ petition, has also given liberty to the petitioner to take appropriate legal action for breach of contract and consequent loss or damages, if any, before the appropriate forum, which in our opinion will meet the ends of justice. Accordingly the Writ appeal is dismissed.