
(1989) 02 DEL CK 0046
In the Delhi High Court
Case No : First Appeal No. 199 of 1988

Vivek Jain

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-02-1989

Acts Referred:

Citation : AIR 1989 Delhi 301 : (1989) 2 ARBLR 98

Hon'ble Judges : S.S. Chadha, J;P.N. Nag, J

Bench : Division Bench

Advocate : Satish Chander, Sarat Chandra, Dalip Singh, Vijender Jain, Meenakshi Singh, A.K. Sen and S.P. Aggarwal, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This appeal has arisen out of the judgment dated December 21. 1988 of the learned -Single Judge hooking that the judgment of the Division Bench dated December 2. 1988 in Cwp 2440/88 operates as a res judicata in the suit.

(2) The Delhi Electric Supply Undertaking (for short called DESU.) decided to install two numbers power generating sets of 67.5 Mw capacity each in place of the old power plant at Rajghat. Desu entrusted the job of disposal of "B" Thermal Power Station of Rajghat Power House to Dgs &D. New Delhi so that the premises occupied by "B" Thermal Power Station could be vacated and two new power generating sets of 67.5 Mw each be commissioned. DGS&D. invited tenders for sale of "B" Thermal Power Station Rajghat, Delhi. The tender offer of the appellant was accepted and a sale letter was issued. It is unnecessary to refer to the intervening period or negotiations. An amended sale letter was issued by DGS&D on January 8, 1988. According to the terms of the sale, "B" Station at Rajghat Power House consisting of two numbers Turbo Alternators connected with four boilers as detailed in the tender enquiry read with subsequent amendment letters dated October 27, 1987 and November 12, 1987 was agreed to be sold at a price of Rs. 1,65,61,007 plus local tax as applicable. A

sum of Rs. 1 lakh received along with the tender and Rs. 10 lacs received along with the letter dated December 11/14, 1987 had been adjusted towards the sale value. According to the terms of the sale, a sum of Rs. 6,56,100 was to be paid by January 13, 1988 and Rs. 24,84,151 by January 22, 1988 and the balance payment of Rs. 1,23,20,756 plus sales tax was to be made within 90 days from the date of the receipt of letter i.e. April 8. 1988.

(3) The appellant did not deposit the amount and asked for the extension of time. DGS&D in their letter dated May 19, 1988 extended the date for making the entire balance payment due along with the compensation charges for delayed payment as per the terms of the contract and also sales tax to June 8, 1988. By letter dated July 22, 1988 the extension of time was again granted. The appellant was allowed to make payment of the balance of the 25 per cent of the cost of sale as provided in the sale letter dated January 8, 1988 plus compensation charges as per terms to make up for 25 per cent of the total payment by August 10, 1988 and to make payment of the balance of the contract value, viz., Rs. 1,23,20,756 plus compensation charges as per contract within 30 days of the issue of Sro which was to be issued after the receipt of payments of the balance of 25 per cent.

(4) A circular dated July 30, 1988 inviting risk resale tender notice for the sale of "B" Station at Rajghat Power House, New Delhi was issued. The date and time of receipt of tenders was fixed as August 29, 1988 at 1.30 p.m. and the date and time of opening of tenders was fixed as August 29, 1988 at 3.00 p.m. The date of the risk resale tenders for filing and opening was extended to September 29, 1988 at the same time.

(5) The appellant did not complete the deposit of 25 per cent of the sale price as given in the extension dated July 22, 1988 by August 10, 1988. The appellant sought extension of time to make the payment of the balance of the contract value but the time was not extended. The appellant, however, deposited a sum of Rs. 13,49,251 towards 25 per cent of the quoted price on August 25, 1988 and also paid another sum of Rs. 2,17,000 towards interest/compensatory amount on August ,

(6) The Government of India DGS&D by letter dated September 16, 1988, cancelled the contract of the appellant as the appellant failed to make the payment as per the contract terms despite extension up to February 15, 1988 up to May 2, 1988 up to June 8, 1988 and the last extended time limit having expired on August 20, 1988. The earnest money of Rs. 1 lakh paid by the appellant was forfeited. It was directed that the stores would be resold at the appellants risk and expenses and any loss suffered would be recovered from the appellant as per the terms and condition of the sale. It was also notified that a risk resale tenders were due for opening on September 29 1988.

(7) The appellant was offered another opportunity and tenders were sent to him. However, a condition was imposed that the appellants quotation

must be accompanied with Dacr towards security deposit equivalent to 10 per cent value quoted in addition to the normal earnest money required as per T/per cent. It was stated that in case of failure or refusal to furnish the aforesaid S/D and E-M along with the tender, the appellant's tender would be ignored and the risk resale would be decided on the basis of the remaining tenders.

(8) The tenders were opened. The appellant had quoted the price as Rs. 1,63,22,007. M/s S. S. Jain and Co. respondent No. 4 quoted as Rs. 1,71,99,999. The tender of respondent NG. 4 was accepted and a sale letter dated October 14, 1988 was issued accepting their tender and requiring, them to make payment of 10 percent of the sale value on October 24, 1988 and balance of 25 percent of the payment by November 1, 1988

(9) The appellant filed on October 24, 1988 a writ petition under Article 226 of the Constitution of India challenging the validity and legality of the memo dated September 16, 1988 cancelling the contract/sale of "B" Station at Rajghat Power House at New Delhi in favor of the appellant and for a writ of mandamus directing the respondents not to act pursuant to the sale letter dated October 14, 1988. It would be appropriate to reproduce the reliefs craved -

"It is Therefore, most respectfully prayed that this Hon'ble Court be pleased to call to the record of the case and upon perusal of the same issue such appropriate writ, order or direction as may do complete justice to the Petitioner particular:

(A) issue an appropriate writ, order/direction in the nature of certiorari and/or otherwise quashing the letter dated 16-9-1988 cancelling the contract of the "B" Power Station and forfeiting the earnest money of Rs. 100,000 and the letter of the respondent dated 16-9-88 withholding the amount of Rs. 44,06,251 and the action of Respondent No. 2 in accepting the tender offer of Respondent No. 4.

(b) issue, an appropriate writ, order or direction in the nature of mandamus and/or otherwise directing the Respondent not to act upon in any manner under of pursuant to the sale letter dated 14-10-88 issued in favor of the Respondent No. 4 and not to accept the initial payment of 10 percent and 15 per cent and issue the Sale Release order in their favor.

(E) issue appropriate writ or direction in the nature of Mandamus and/or otherwise calling upon the Respondent to act according to law and withdraw the cancellation letter dated 16-9-1988 and issue the Sale Release Order to the Petitioner in terms of letter dated 8-1-1988 in favor of the petitioner."

(10) A Division Bench of this Court issued notice to show cause as to why Rule Nisi be not issued, returnable for November 25, 1988 and in the meanwhile, restrained the respondents from issuing the Sale Release Order in favor of respondent No. 4. Cause was shown. The writ petition was dismissed on November 30, 1988 and the detailed reasons were announced on December 2, 1988.

"I lie Division Bench in the Order dated December 2, 198 held :-

"The grievance of the petitioner is by way of breach of contract by the respondents. Sale of the power plant is a purely commercial transaction of contract/sale by public authority. The proper remedy for the breach of contract is a suit not a writ petition. The writ petition is, Therefore, not maintainable on this short ground. But even assuming that the remedy is available, the petition has to be dismissed."

1.The Division Bench then briefly noticed the facts including the payments made by the appellant. It was opined that the respondents had not accepted the said payments towards their earlier demand although the deposit was made by the appellant. The contention of the counsel for the appellant was noticed that the allotment of the contract to respondent No. 4 was illegal. The first contention of the appellant was that imposition of a condition of payment of 10 per cent security on the appellant alone deprived him of the right to compete with other tenderers and was discriminatory in nature. For the reasons recorded therein this submission was rejected. The second contention was that the tender of respondent No. 4 was incomplete in regard to Schedule I and additional clause to Schedule I, which is a precondition for acceptance of the tender. The argument was not that the tender was subsequently completed at Calcutta office of respondent No. 2 and this act by itself showed mala fides. The Division Bench held that there was substantial compliance with the required merits since the necessary particulars were supplied by respondent No. 4 before the contract for sale was entered into with respondent No. 4 and the failure of the information in the tender itself is not fatal with these findings, the submissions were rejected and C.W.P. 2440/88 was dismissed by detailed order on December 2, 1988.

(11) The appellant filed a petition for Special Leave to Appeal against the judgment and order dated November 30, 1988 in C.W.P. 2440/88. It came up for hearing before the Supreme Court on December 7, 1983 and was dismissed with the following order:-

"After hearing learned counsel for the petitioner we do not find any merit in the petition. The petitioner's contention that the amount deposited by him is liable to him cannot be covered in the present petition may approach the appropriate authority this may be considered. Special Leave Petition is dismissed."

(12) It is thereafter that the appellant filed a suit for declaration claiming the following reliefs :-

"(A) That this Hon'ble Court may declare that the sale letter dt. 14-10-1988, in relation to "B" Thermal Power Station, Rajghat, Delhi in favor of defendant No. 4, pursuant to its tender dated 29-9-1988, is null and void and so also issuance of sale release order in favor of defendant No. 4.

(b) That it may further be declared that the plaintiff pursuant to his tender dated

29-9-1988, is entitled to sale letter and issue of sale release order.

(E) This Hon^{ble} Court may declare, that the amended sale letter dt. 8-1-1988, issued by defendant No. 2 in favor of the plaintiff, is a completed/concluded contract which is valid and subsisting and the cancellation thereof, vide letter dt. 16-9-1988 of defendant No. 2 is illegal, null and void."

(13) The learned Single Judge in the order under appeal briefly referred to the allegations in the plaint. One of the grounds on which the acceptance of the tender of respondent No. 4 was challenged was that as per Clause (7) of Instructions to Tenderer, the form as submitted by respondent No. 4 was required to be signed by all the partners of respondent No. 4- firm, but the tender form was signed by only one person, namely, Azad Kumar Jain who was the attorney of respondent No. 4- firm and as such, the tender form of respondent No. 4 was nonest. The other ground of attack was that the tender form submitted by respondent No. 4 was incomplete, inasmuch as annexures to the schedule were not submitted along with the tender form and they were subsequently got filled by respondent No. 2 from respondent No. 4 sometime after September 29, 1988 at Calcutta in collusion between both of them. Another plea taken was that the contract as per the amended sale letter dated January 3, 1988 by respondent No. 2 in favor of the appellant was a subsisting valid contract as the appellant had made payments of the balance of 25 per cent bid amount along with the compensation as per the directions of the respondents up to August 26, 1988 as against the finally extended date of August 10, 1988. The learned Single Judge compared the pleas raised in the writ petition filed by the appellant as well as those contained in the plaint of the suit and found that the grounds of attack to the inviting .of the second tender and the acceptance of the same were the same in the writ petition as well as in the suit. The learned Single Judge expressed the view that those grounds were repelled by a Division Bench of this Court in a writ petition and that operates as a res judicata on the suit.

(14) The main submission of Shri Satish Chandra, the learned counsel for the appellant is that the Division Bench in the writ petition expressed the opinion that the writ petition is not maintainable as the proper remedy to "the breach of contract is the suit and the Petition and thus any expression of opinion on the merits of the pleas raised in the writ petition would not operate as res judicata. The contention is that any expressions of opinion on the merits made by the writ Court while dismissing the writ petition as not maintainable are obiter and binds no one and could not operate as res judicata. Reliance is heavily placed on "Upendra Nath Bose v. Lall and Others". Air 2940 Pc 222(1). In that case the Court construed award to decide, the main issue whether it had jurisdiction to entertain it and took a decision that it had no jurisdiction. Their Lordships expressed that a Court which declines jurisdiction cannot bind the parties by its reasons for declining jurisdiction; such reasons are not decisions and are certainly not decisions by a Court of competent jurisdiction. It was held that it is the decision as to lack of jurisdiction which is res judicata and not the reasons for

that decision. Reliance is next placed on "Shankerlal Patwari v. Hirala Murarka and Others Air 1950 Pc R0(2). In that case the Court held that the suit is not maintainable by reason of failure to comply with the provisions of Section 80 of the Code of Civil Procedure. It was ruled that any findings given on merits are obiter and do not support the plea. of res judicata either in favor of or against any party. Reliance is placed on Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it was held-

"....An obiter binds none, not even the author, and obliteration of findings rendered in supererogation must allay the appellant's apprehensions. This Court is in a better position than the High Court being competent, under certain circumstances, to declare the law by virtue of its position under Article 141. But, absent such, authority or duty, the High Court should have abstained from its generosity. Lest there should be any confusion about possible slants inferred from our synopses statements, we clarify that nothing projected in this judgment is intended to be an expression of our opinion, even indirectly. The facts have been set out only to serve as a peg to hang three primary constitutional issues which we will formulate a little later, Operation Election."

Reliance is also placed on Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and Civil Miscellaneous Mancat Ram Vs. Delhi Development Authority and Others, . The ratio of these cases will be referred later.

(15) Reliance is also placed on Mirza Abid Kazim Husain and Others Vs. Mirza Nasir Husain and Others, wherein it was held that once the Civil Court has come to a conclusion that the Civil Court is not competent to try the suit, an adverse findings of the "Court on the rights of the plaintiffs cannot constitute a ground so as to enable the defendant to plead the bar of Section 11 of the Code. The Civil Court. had held the suit to be triable by the Revenue Court u/s 230 of the U.P. Tenancy Act, 1939. Reliance is placed on "S, Subba Rao and others v. N. Perumal Reddi and Others", Air 1918 Mad 988 wherein it was held that the doctrine of res judicata does not apply to questions of jurisdiction, in other words, the plea of res judicata oust or confer jurisdiction in an incompetent plea. Reliance is lastly placed on Pritam Kaur Vs. State of Pepsu and Others, wherein it was held that before a decision can operate as res judicata it must be a decision of a Court having jurisdiction. ,

(16) On the other hand, Mr. Ashoke Sen. Senior Advocate, the learned counsel for respondent No. 4 took us through the allegation and the grounds of challenge in the writ petition contained in paras 24 to 32. In the nutshell, the allegations are that the impugned action of respondent No. 2 in cancelling the contract/sale of "B" Thermal Power Station at Rajghat by letter dated September 16, 1988 and accepting the tender of respondent No. 4 by issue of the sale letter dated October 14, 1988 is highly illegal, invalid, arbitrary, capricious, mala fide, in violation of the principles of natural justice and the fundamental rights guaranteed by Articles 14 and 19 of the Constitution of India. Our attention is invited to the law laid down by the Supreme Court in The D.F.O., South Kheri and

Others Vs. Ram Sanehi Singh, . It was held there that "We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of writ". The submission is that the writ petition tiled by the appellant was maintainable. Even if the right to relief arose out of the breach of the contract where the action challenged was of a public authority. Reference is then invited to D.D. Suri Vs. A.K. Barren and Others, holding that where serious allegation including those, of improper motive and mala fides have been made the High Court is competent to entertain the writ petition and not dismiss it in liming.

(17) In para 28 of the writ petition it is averred that it is settled law that in matters of awarding contract the State cannot act unreasonably and in a discriminatory manner and the action of respondent No. 2 calling upon the petitioner to pay 10 per cent as security deposit is in direct violation of Art. 14 of the Constitution, it is again averred that respondent No. 2 could not in law accept any tender from respondent No. 4 and issue them a sale letter for purchase of "B" Power Station as the acceptance of the tender offer of respondent No. 4 was contrary to all norms and standards and against fair play and justice. It is submitted that the tender of respondent No. 4 was incomplete and not in order as it was not accompanied by Schedules 1 and 3 of the tender notice and could not in law be considered and accepted. Referring to these allegations Mr. Sen contends that the writ Court had jurisdiction to go into the actions of a public authority prior to and in formation of the contract Our attention is then invited to the observation of the Supreme "Court in "Ramana Dayaram Shetty v. The International Airport Authority of India and others" Air 1979 Bombay 28 wherein it was held :-

".....It must Therefore be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licenses etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

(18) In Harminder Singh Arora Vs. Union of India (UOI) and Others, it was held that the Government may enter into a contract with any person but in so doing if the authority or the State chooses to invite tenders then it must abide by the

conditions laid down in the tender notice and the result of the tender and cannot arbitrarily and capriciously accept a much higher tender to the detriment of the State. The award of the contract to the Government undertaking by granting price preference and rejecting the more suitable private contractors in contravention of the terms of the contract was held arbitrary, capricious and violative of Article 14. That case arose out of the petition under Article 226 of the Constitution of India filed in the High Court of Adjudicature at Bombay which dismissed it but the appeals succeeded in the Supreme Court.

(19) Section 11 of the CPC provides that no Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or anyone of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Explanation VIII provides that an issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited Jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised. The result which flows from a combined reading of the provisions and on a harmonious construction is that the decision rendered by a Court of limited jurisdiction of an issue which is heard and finally decided will operate as res judicata. The question is whether the writ Court had jurisdiction to hear and decide the petition filed by the appellant under Article 226 of the Constitution of India.

(20) Jurisdiction of a Court means the legal authority to administer justice. It consists in taking cognizance of a lis, authority to bear and decide the questions at issue and then to pass the orders sought for. In "Hirday Nath Roy v. Ram Chandra Barna Sainra" Air 1921 Cal 34, the question as to what is meant by jurisdiction was answered by Mukerjee, A.C.J. and this was quoted with approval in Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, . It was explained :-

"In the order of Reference to a Full Bench in the case of Sukhlal v. Tara Chand (1905) 33 Cal. 68 (FB), it was stated that jurisdiction may be defined to be the power of a Court to "hear and determine a cause, to adjudicate and exercise any judicial power in relation to it : " in other words, by jurisdiction is meant "the authority which a "Court has to decide matters that are. litigated before it or to take cognizance of matters presented in a formal way for its decision." An examination of the cases in the books discloses numerous attempts to define the term "jurisdiction", which has been stated to be "the power to hear and determine issues of law and fact" "the authority by which the judicial officers take cognizance of and decide issues"; "the authority to hear and decide a legal controversy" ""the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial

power over them"; "the power to hear, determine and pronounce judgment on the issues before the Court"; "the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect"; ""the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution" [Emphasis (here in " ") supplied]. Proceeding further the learned Judge observed :

"This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be consider with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary" or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction of the subject-matter is obviously of a fundamental character. Given, such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction; "for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a cause at all not the decision rendered therein is what makes up jurisdiction;" and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction"

(21) The jurisdiction of the writ Court under Article 226 of the Constitution was invoked by the appellant by filing a petition claiming the relief-.quoted above by complaining the infringement of Articles 14 and 19(1)(g) of the Constitution and other legal and contractual rights. Article 14 speaks of equality before law and equal protection of laws. Equality of opportunity applies to matters of public contracts. There cannot be any discrimination at the time of entry into the field of consideration of persons with whom the Government could contract. The appellant had alleged that "in the matters of awarding contracts the State cannot act unreasonably and in a discriminate manner", the grievance was to the imposition of condition of a Dacr towards security deposit equivalent to 10% value quoted on the appellant alone which deprived him of an equal opportunity to compete with others and thus discriminatory. The appellant had also alleged that "the action of the respondents in cancelling the sale contract in favor of the appellant was highly, arbitrary, capricious and mala fide on the face of it". The jurisdiction of the High Court exists to issue writs and can be exercised for the enforcement of the fundamental rights, as well as of non-fundamental and ordinary legal rights. Any person who complains of the infraction of any of the fundamental rights Is at liberty to move the High Court. The jurisdiction is vested in the writ Count to determine and grant relief where a fundamental right of the petitioner has been affected. The writ Court has also jurisdiction to go into the question and find out whether the petitioner has a legal right which entitles him to any of the writs, orders or directions within the scope of Article 226 of the

Constitution and that such right has been infringed .In "Fertilizer Corporation Kamagar Union v, Union of India", A.I.R 1981 S.C. 344 their Lordships observed that "the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights but for any other purpose".

(22) There is a difference between the exercise of jurisdiction and the distance of jurisdiction and fundamentally different consequences follow. When the jurisdiction is invoked for the enforcement of non-fundamental or ordinary legal rights, the Courts have taken the view that these proceedings before the writ Courts are summary proceedings reserved for extraordinary cases, leaving the petitioner to seek other available remedy by way of a suit etc. It is only a self-imposed restriction upon the exercise of the Court's discretion to exercise its extraordinary jurisdiction. In cases where questions of pure alleged breach of contract are involved, the writ Courts generally do not interfere under Article 226 of the Constitution. There may be facts which are disputed and that would require oral as well as documentary evidence to establish it. The oral evidence may have to be tested by cross-examination. Such cases cannot be conveniently and satisfactorily tried by the proceedings under Article 226. The writ Court, Therefore, declines to exercise jurisdiction. The writ Court in such cases does not cease to be competent. Its inability to determine the writ petition is not from incompetence, but because of an existence of an alternative or equally efficacious remedy where the writ petitioner is directed to go. If the writ Court chooses to decide even disputed questions of facts raised on a writ petition, then it is a decision of competent jurisdiction and would operate as res judicata.

(23) In Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , their Lordships quoted with approval the division of cases in which the breach of alleged obligation by the State or its agents are "alleged into three types, namely :-

"(I)Where a petitioner makes a grievance of breach of promises on the part of the State in cases where on assurance or. promise modify the State he has acted to his prejudice and predicament, but the agreement is short of a contract within meaning of Article 299 of the Constitution;

(II)Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed there under and the petitioner alleges, a breach on the part of the State and

(III)Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

The Patna High Court had held that the cases before their Lordships should be placed in the third category where questions of pure alleged breaches of contract are involved and thus no writ or order can issue under Article 226 of the Constitution in such cases to compel the authorities to remedy a breach of

contract pure and simple. The Supreme Court upheld the view. but did not lay down that the writ Court has no jurisdiction where mere breach of contract is alleged. It is true that resort to jurisdiction under Article 226 is not intended as an alternative remedy for the reliefs which can more appropriately be claimed in a suit. But there could be cases where a breach of contract by the State or its agents or its officer? would call for interference under Article 226 of the Constitution. Writ jurisdiction under Article 226 is of wide amplitude to correct manifest injustice.

(24) In Mangat Ram's case (supra) of the Delhi High Court the petitioner had challenged the action of the Delhi Development Authority in determining the lease agreement on account of the breach of its terms and in taking possession. The petitioner contended that he had committed no breach of the lease deed in question and thus the determination of the lease deed was unjustified. A preliminary objection was taken by the D.D.A. that the petitioner was not entitled to invoke the with jurisdiction of the High Court under Article 226 of the Constitution in as much as the action complained of was not statutory act but was merely the exercise of the powers conferred on a Lesser under the terms of a lease deed. The Division bench came to the conclusion that the preliminary objection was well taken and upheld it without going into the other contentions regarding the merits of the cancellation of the lease that had been put forward in the writ petition. The Bench felt that the case was a clear and simple one for enforcement of an ordinary contractual right which is fully governed by the third principle of Radhakrishna Aggarwal's case (supra). The petitioner was left to seek his remedies, as may be advised to take, for enforcement of his rights. Rangaiathan, J. who spoke for the Bench, however upheld the jurisdiction, of the writ Court in certain situations and observed :-

"We do not wish, however, to be understood as saying that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Article 226 of the Constitution. This branch of law is still in a process of evolution. The proliferation of statutory authorities and public corporations has brought into existence a huge contractual field in which the terms and conditions of the contract are practically dictated by the monopolistic limbs of State or other public authority and the other party to the contract has very little say in regard to the terms and conditions to which he is supposed to have agreed. In this state of things situations are likely to arise which may justify interference under Article 226 even in such cases"

Their Lordships then indicated two situations In which the writ Court may interfere. The first situation covers cases where, after entering into a contract the Government purports to exercise certain rights under the contract, but in reality, the Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. The second situation relates to cases where a term of contract imposed by the State or authority on the citizen is contrary to law and thus non-est. Such cases, in our view, would be

amenable to interference under Article 226 of the Constitution meaning thereby that the writ Court has jurisdiction to enforce the rights.

(25) The decision of the Privy Council in Shanker Lal's case (supra) was considered by the Supreme Court in Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, . It was ruled :-

"No doubt it would be open to a Court not to decide all the issues which, may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If for instance the plaintiff's cause of action is against a Government and the plaint does not show that notice u/s 80 of the CPC claiming relief was served in terms of the said Section it would be the duty of the Court to reject the plaint recording an order to that effect with reasons for the order. In such a case the Court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. But, where the plaint on the face of it does not show that any relief envisaged by Section 80 of the Code is being claimed, it would be the duty of the Court to go into all the issues which may arise on the pleadings including the question as to whether notice u/s 80 was necessary. If the Court decides the various issues raised on the pleadings, it is difficult to see why the adjudication of the rights of the parties, apart from the question as to the applicability of Section 80 of the Code and absence of notice there under should not operate as res judicator in a subsequent suit where the identical questions arise for determination between the same parties."

(26) In the present case, the writ Court in the order dated December 2, 1988 did hold that the sale of the power plant is a purely commercial transaction of contract/sale by public authority and the proper remedy for the breach of the contract is a suit and not a writ petitioner. If the writ petition had been dismissed as not maintainable, then different consequences would have followed. The issues would not have been heard and finally decided and could not have operated as res judicata. The writ Court, however, assumed that the remedy is available and determined the merits of the pleas raised and dismissed the writ petition.

(27) The appellant had alleged the violation of Articles 14 and 19(1)(g) of the Constitution of India in the formation of the contract by the State. The rule inhibiting arbitrary action by the State applies upon the Government is dealing with the public by way of entering into contracts. It cannot act arbitrarily and its actions have to be in conformity with laid down norms and supported by relatable reasons. The subject matter of the writ petition was the award of contract by the State which could not act unreasonably and in a discriminatory manner. The challenge was to the requirement alone in case of the appellant that his "quotation must be accompanied with a Dacra towards security deposit equivalent to 10% of the value quoted in addition to the normal earnest money required as per T/E". The failure or refusal to furnish the aforesaid security deposit and the E-M along with the tender had the effect of the appellant's

tender being ignored and the risk resale decided on the basis of the remaining under. Another ground of attack was to the acceptance of the tender offer which was alleged to be contrary to all norms and standards and against fair play and justice. It was averred that the tender of respondent No. 4 was incomplete and not in order as it was not accompanied by Schedule I and Iii of the tender notice and could not in law be considered and accepted. The writ Court had jurisdiction to go into the actions of the State when such allegations were made in the writ petition in for nation of the contract by the Government. The writ Court assumed jurisdiction and dealt directly with the questions of discrimination and departure from norms or standards. When there is jurisdiction of the subject matter, then the decision of all questions arising in the case is but an exercise of that jurisdiction. The decision operates as rest judicator ,as rendered by a competent Court. The writ Court on expressing that the writ petition was not maintainable and the proper remedy for the breach of the contract is a suit, did not cease to be competent. The writ Court had firstly expressed reservations to go on with the merits of the writ petition, but then assumed jurisdiction and dismissed the writ petition on merits.

(28) The appellant filed a SLP against the orders of the writ Court dismissing C.W.P. 2440 of 1988. It is opposite to reproduce one of the grounds as it completely reflects the stand of the appellant .-

"That the Hon"ble High Court has not appreciated the nature of transactions between the petitioner and the respondent No. 2 which was on behalf of Respondent No. 3. The respondent No, 2 is a limb of Respondent No. 1 which is discharging its statutory obligations. Similarly Respondent No. 3 is a wing of Municipal Corporation of Delhi which has been as such statutorily authorised by a resolution of the said respondent No. 3 to enter into contract which in turn has authorised respondent No. 2 for the said purpose. The writ was not in regard to any executive act but against breach of statutory obligation to act in accordance with law. The aggrieved petition entered into the contract with the State in exercise of ill. statutory power flowing from Municipal Corporation of Delhi Act and the rules framed there under and the petitioner is alleging breach of the same."

The appellant then referred to the facts in the formation of the contract and contended that had the High Court noticed those facts, the result of the writ petition would have been different. It was then indicated as to how the High Court did not appreciate facts and went wrong in the decision rendered. The appellant never questioned the jurisdiction of the writ Court to decide the petition on merits.

(29) Upend era Nath Bose"s case (supra) confined itself to the reasons for declining jurisdiction as not operating as res judicata. It has no application to the case before us as the writ Court assumed jurisdiction and determined the merits of the writ petition. The other cases of various High Courts are not dealt with separately because of our view on the competency of the writ Court to entertain

and determine the writ petition on a writs .

(30) The writ Court has concurrent and competent jurisdiction and as it has decided the questions against the appellant, he is barred by the rule of res judicata from reopening the decided questions in the civil Court. The appeal, Therefore, fails and is hereby dismissed with no order as to costs. The interim orders made in the case are. hereby vacated.