
(23) For the reasons mentioned as above, we are constrained to hold that the view taken in **Rajinder Singh's case** (supra) and in **Bhim Singh's case** (supra) is not correct.

(24) We hold as follows :—

The provisions of Section 12AA of the "Special Act" do not override the provisions of Section 7 of the Act and the proceedings will not vitiate if investigation is not completed within six months as per sub-section (5) of Section 167 of the Code of Criminal Procedure.

(25) Both questions having been answered against the petitioner, the quashing petition fails and is dismissed. With the dismissal of this petition the interim order staying the trial of the petitioner automatically stands vacated.

R.N.R.

Before S.S. Nijjar and S.S. Grewal, JJ.

HARMESH CHAND,—*Petitioner*

versus

THE FOOD CORPORATION OF INDIA AND
OTHERS,—*Respondents*

C.W.P. NO. 6692 OF 2003

18th December, 2003

Constitution of India, 1950—Arts. 14, 19(1)(g) and 226—Acceptance of petitioner's tender for handling & transportation of food-grains by the FCI—Deposit of security by petitioner—An officer of FCI not permitting petitioner to execute the contract—Allegations of mala fide against the Officer—Case of petitioner fully established from the record—No disputed questions of fact—Glaring irregularities committed by the Officer—Action of the Officer wholly arbitrary and violates Arts. 14 & 19(1)(g)—Petition allowed while directing respondents to permit petitioner to continue to work in pursuance to the contract.

Held, that a writ petition under Articles 226/227 of the Constitution of India would not be entertained if the same is filed with the ulterior motive of avoiding the bar to the specific enforcement of a contract contained under Section 14(1) of the Specific Relief Act, 1963. Under this section, the contract cannot be directed to be specifically enforced which is a contract for the non-performance of which compensation in money is an adequate relief. In the present case, the petitioner has challenged the wholly arbitrary and unreasonable action of respondent No. 5, an Assistant Manager of FCI, in deliberately not permitting the petitioner to execute the contract. In such circumstances, it would be wholly inappropriate for this Court not to entertain the writ petition praying for a command to the respondents to execute *bona fide* the statutory duties which they are bound to perform in accordance with law. When glaring irregularities committed by Officers of Corporation, which is an instrumentality of the State, are brought to the notice of the High Court, it cannot stand as a mute spectator. The wholesome jurisdiction of this Court under Articles 226/227 of the Constitution of India to do substantial justice, in the facts and circumstances of a particular case, cannot be fettered by technicalities.

(Para 11)

Further held, that the action of the Assistant Manager, Food Corporation of India, in not permitting the petitioner to execute the contract is mala fide and therefore, wholly arbitrary and violates Articles 14 and 19(1)(g) of the Constitution of India.

(Para 18)

P.S. Patwalia, Sr. Advocate with T.P.S. Chawla, *Advocate*,
for the petitioner.

Rajesh Garg, *Advocate*, *for the respondents.*

JUDGMENT

S.S. NIJJAR, J.

(1) By agreement of the counsel for both the parties, the writ petition is heard for final disposal. In view of the preliminary objections raised by the learned counsel for the respondents at the time of arguments, we deem it appropriate to make a reference to the pleadings of the parties *in extenso*.

(2) An advertisement was issued by the Food Corporation of India (hereinafter referred to as "the FCI") for inviting tenders for handling and transport contractor at Food Storage Depot of the FCI at Nakodar. The petitioner submitted his tender, which was accepted by the FCI by telegram dated 5th October, 2002. The contract was for a period of two years with effect from 5th October, 2002 till 4th October, 2004. The petitioner was awarded the contract at 158% Above Schedule of Rates (hereinafter referred to as "ASOR"). He was asked to deposit the security amounting to Rs. 35,000 with Divisional Manager, FCI, Jalandhar within a week time and take up the work immediately. The petitioner immediately approached the Office at Nakodar to deposit the security amount. He was told that the security amount is to be deposited at Jalandhar. When he went to Jalandhar, he was told that he should deposit the amount at Nakodar. The petitioner was, therefore, shuffled between the two offices from 5th October, 2002 till 25th October, 2002. Ultimately, the petitioner made a written application on 25th October, 2002 which is attached as Annexure P-2 to the writ petition, to the District Manager, FCI, Jalandhar, respondent No. 4 for deposit of the security. The petitioner thereafter went to Nakodar to join as Transport Contractor. He was not permitted to join by Shri Gurdev Ram, Assistant Manager, FCI, Food Storage Depot, Nakodar, District Jalandhar, respondent No. 5. It has been stated that respondent No. 5 was hand in glove with the local contractors. He was, therefore, not interested that the petitioner should be permitted to join or execute the contract. One of the reasons for this could be that the petitioner had taken the contract at 158% ASOR whereas the local contractors were doing the work at much higher rates. Respondent No. 5 was, therefore, least interested to permit the petitioner to join and told him to go and join in the office of District Officer, Jalandhar. However, the District Officer, Jalandhar again told the petitioner to go to Nakodar. When the petitioner went back to Nakodar to join, he was physically prevented from doing so. In fact, respondent No. 5 had collected a large number of members of the Local Truck Union in his Office who were obstructing the petitioner in joining. Ultimately, the petitioner gave the joining report in writing on 23rd November, 2002 (Annexure P-3) to respondent No. 5 with a copy to respondent No. 4. In spite of having accepted the joining report, respondent No. 5 did not permit the petitioner to execute the contract,

and rather sent the joining report to District Manager at Jalandhar. There was no need to send the report to Jalandhar as the contract pertains to the office at Nakodar. Repeated requests of the petitioner for being permitted to execute the contract, were rejected without any reason. When the petitioner went to the office of respondent No. 5, he was again faced by a hostile crowd of local transport operators of that area. The petitioner was threatened to leave the contract or to face dire consequences. The petitioner was, therefore, constrained to file Crl. Misc. No. 50012-M of 2002 on 26th November, 2002, for a direction to the Senior Superintendent of Police, Jalandhar, Deputy Commissioner, Jalandhar, Station House Officer, Police Station, Nakodar, District Jalandhar to take appropriate steps to provide police protection to the petitioner so that he may be able to perform his contract and be able to load and transport the foodgrains from the godown of FCI, Nakodar. The aforesaid petition was disposed of by this Court on 28th November, 2002 with the following observations :—

“Heard. The petitioner seeks intervention of this Court in law and order problem which has arisen in Jalandhar.

This petition is disposed of with a direction to the District Magistrate, Jalandhar to look into the matter and take appropriate steps. Copy of the order be given dasti on payment of usual charges.

(Sd.)/-
Amar Dutt, Judge.”

(3) In this petition, it was pointed out that the petitioner had received the three telegrams dated 20th October, 2002, 29th November, 2002 and 30th November, 2002. It was also stated that the telegram dated 29th November, 2002 and 30th November, 2002 had been issued much prior to the dates mentioned in the telegrams. The telegrams were clearly pre-dated to create evidence against the petitioner. Pursuant to the orders passed by this Court, the District Magistrate, Jalandhar informed the S.S.P., Jalandhar by letter dated 10th December, 2002 that Truck Operator Union, Nakodar may create law and order problems at the time of lifting of foodgrains by the petitioner. Keeping in view the orders passed by this Court, the

S.S.P. was requested to direct the SHO concerned to provide sufficient police assistance to the Area Manager, FCI so that the law and order could be maintained while the foodgrains are transported at Nakodar. The S.D.M., Nakodar was directed to be the Duty Magistrate for this operation. The S.D.M., Nakodar investigated the matter and submitted the report dated 12th December, 2002 to the District Magistrate, Jalandhar. The S.D.M. in his report has come to the conclusion that the petitioner had been granted the contract., He gave his Joining Report on 10th December, 2002. He was given police protection for joining, but the Assistant Manager did not allow the said Contractor to join. The Assistant Manager had been called by the S.D.M. on 9th December, 2002 and advised to accept the joining report of the petitioner. But the Assistant Manager stated in a casual manner that the petitioner may give his joining report in his Office. On 10th December, 2002, the petitioner went to the Office of respondent No. 5 alongwith police protection for giving his joining report, which respondent No. 5 refused to accept. The S.D.M. has stated that respondent No. 5 is not accepting the Joining Report because of his connivance with the old contractors. The apprehension of the petitioner about danger to his life was accepted by the S.D.M. and he has recommended police protection. The S.D.M. even recommended that legal action may be taken against the Assistant Manager, FCI F.S.D., Nakodar who is not allowing to the petitioner to join duty. In spite of the aforesaid findings of the S.D.M., respondent No. 5 did not allow the petitioner to join duty. The petitioner, therefore, sent another joining report to the respondents through courier on 11th December, 2002. Even then the petitioner was not allowed to join duty. Again the petitioner submitted representation on 12th December, 2002, requesting respondent No. 3, Sr. Regional Manager to allow the petitioner to execute the contract. The petitioner also submitted representations to the Chief Minister, Punjab and the Commissioner, Jalandhar Division, Jalandhar. Even the car of the petitioner was attacked by the Local Transporters when he was going to submit the joining report. Instead of granting any relief, the respondents have arbitrarily cancelled the contract granted to him by orders passed by respondent No. 3, Sr. Regional Manager, FCI, Chandigarh. During the period mentioned above, from October, 2002 onwards the petitioner was not being permitted to execute the contract. The respondents got the work done from the local contractors who were obstructing the petitioner at the rate of 245% ASOR. Notices to this effect were sent

to the petitioner stating that the petitioner had failed to execute the contract, which is being carried out at his risk and costs as per Clause X(c) of MTF for loading of the planned as well as wheat export specials. The petitioner had been informed to take up the work forthwith. This letter was written on 2nd November, 2002. By letter dated 29th November, 2002, the petitioner was informed that the work had been done through Shri Jai Ram at the rate of 245% ASOR. The petitioner was directed to deposit the excess amount of Rs. 2,16,989.00 with FCI. The amount was, therefore, recovered from the account of the petitioner at Kapurthala. A fax message was sent to the District Magistrate, Kapurthala to recover the amount of Rs. 3,43,138 (Annexure P-15). Since the petitioner is handling a transport contract at Kapurthala, the money has been deducted from the amount payable for the Kapurthala contract. It is further the case of the petitioner that award of contract to the local truck operator at 245% ASOR was managed and planned by the Assistant Manager in connivance with the local transport operator of that area and this was the very motive of respondent No. 5 to let the petitioner be thrown out from the contract so that the contract would be awarded at much higher rates to the local truck operators who would then share the booty with the Assistant Manager. The petitioner submitted a representation to the Zonal Manager on 20th April, 2003 (Annexure P-16). No action has been taken by the Zonal Manager, even though a reminder was also sent by the petitioner on 24th April, 2003. The petitioner through this writ petition under Articles 226/227 of the Constitution of India challenges the impugned order, Annexure P-12 illegally terminating the contract which had been awarded to the petitioner and the order, Annexure P-15 illegally recovering the amount of Rs. 3,43,138 from the account of the petitioner with regard to the contract at D.M. FCI, Kapurthala.

(4) The respondents have filed a joint written statement through the District Manager, FCI, Jalandhar (respondent No. 4). The case as set up by the petitioner has been denied. The grant of the contract to the petitioner is not disputed. It is, however, stated that the petitioner was required to deposit 50% security amount with the FCI at Jalandhar within a week time. A telegram was issued to the petitioner to this effect on 10th October, 2002. Since the petitioner did not respond to the Corporation's request, reminder telegram was issued on 14th October, 2002. In this telegram, it was pointed out that the security be deposited within seven days failing which "the work

will be got done at your risk and costs". A time bound notice was also issued to the petitioner by Regional Office,—*vide* letter dated 19th October, 2002. The petitioner deposited the requisite amount of security at the District Office of the Corporation at Jalandhar on 25th October, 2002. Again on 26th October, 2002, the petitioner was requested to join the work at Nakodar and to carry out the depot operation as per the direction of respondent No. 4. Since the petitioner did not join at the Centre up to 29th October, 2002, he was sent a telegram on that date to join the work and to ensure loading of the foodgrains, failing which action would be taken against the petitioner in accordance with the tender conditions. There was still no response from the petitioner. Hence telegram dated 1st November, 2002 was sent. Since the petitioner inspite of repeated reminders failed to join work at Nakodar depot, risk and cost arrangements on day to day basis were made through Jai Ram contractor on 245% ASOR under intimation to the petitioner. It is stated that respondent No. 5 cannot be hand in glove with any other contractor. The allegations of the petitioner are mere concoction and protests in order to avoid the risk and cost clause against the petitioner due to his lapses. The respondents admit that SDM, Nakodar called respondent No. 5 to his office on 9th December, 2002 and insisted to accept the joining report of the petitioner in office which was refused by respondent No. 5 as it was against the procedure and norms of joining the contract. Respondent No. 5 requested the SDM to direct the petitioner to submit his joining report in the depot where he has to carry out the work. The mode of transfer and infrastructure available with the petitioner could only be judged and verified at the depot. Due to failure of the petitioner to resume work inspite of the repeated requests and notices from respondents No. 3, 4 and 5, the contract of the petitioner was terminated and the work was got done at his risk and costs. To recover the risk and costs, the petitioner was requested by the District Office letter dated 13th December, 2002 to deposit the amount of Rs. 3,43,138. It is admitted that the petitioner deposited the security on 25th October, 2002 with the District Office at Jalandhar. It is denied that respondent No. 5 was against the petitioner or in favour of anybody. It is also denied that the petitioner was made to shuttle between Nakodar and Jalandhar. The petitioner was aware that the security had to be deposited at Jalandhar. There was no occasion for him to visit at Nakodar for the said purpose. It was mentioned in the telegram dated 5th October, 2002 that he had to

deposit the security with Deputy Manager, FCI, Jalandhar. He approached the District Office only on 25th October, 2002 when the security offer was accepted on the same date. It is denied that the petitioner was physically threatened to prevent him from joining by respondent No. 5. The petitioner was unable to execute the contract and therefore, he has made malicious and baseless allegations to preempt the invoking of the risk and costs clause against him. According to the respondents, the joining report dated 23rd November, 2002 (Annexure P-3) is a fabricated document and the petitioner deserves to be prosecuted under Sections 464 and 471 of the Indian Penal Code. According to the respondents, the receipt register of the District Office, Jalandhar attached with the written statement as Annexure R-7 does not anywhere indicate the receipt of the aforesaid letter. Thus, no question of forwarding the joining report to District Office at Jalandhar arises at all. The Despatch No. 807 shown in Annexure P-3 does not exist as per the records maintained in the depot. The report of the SDM, Annexure P-8 dated 12th December, 2002 states that respondent No. 5 had been directed on 9th December, 2002 to accept the joining report of the petitioner. This is contrary to the fact that the petitioner claims to have submitted that joining report on 23rd November, 2002. There is no mention of the joining report dated 23rd November, 2002 in the report, Annexure P-8. It is denied that the petitioner ever approached the Office of respondent No. 5 at Nakodar for joining work. It is further stated that the telegram dated 29th November, 2002 is in fact dated 29th October, 2002, and therefore, there is no question of pre-dating the telegram as alleged by the petitioner. The respondents further state that they were not party to the Criminal Misc. Petition and no directions were issued to them by this Court. The petitioner may not have made any effort to join the contract for fear of other contractors for which the answering respondents cannot be held responsible. If respondent No. 5 had maliciously not accepted the joining report of the petitioner, the matter could have been reported to the higher authorities of the Corporation, such as DM, Jalandhar. The stand taken by respondent No. 5 before SDM, Nakodar that the petitioner should submit the joining report at the depot where the work is to be executed, was correct as verified by the Committee of Officers of the District Office who have reported that respondent No. 5 is nowhere guilty of not accepting the joining report of the petitioner at the Office of the SDM. The respondents further state that

on 21st December, 2002, the Deputy Commissioner, Jalandhar was informed about the non-joining of the petitioner to undertake the contract. The Committee of three officers was constituted to find out the reality and facts of the case. As per the report of the Committee, it is established that there is no delay on the part of any officer/official for non-accepting of joining report of the petitioner. Instead the petitioner himself is deliberately not joining as Transport Contractors for reasons best known to him and is passing the buck to FCI officials for the same. The Deputy Commissioner was further informed that in order to enable the petitioner to resume work at Nakodar, risk and costs arrangements made through Jai Ram on day to day basis for loading of foodgrains special scheduled for 24th December, 2002 and 30th December, 2002 because of the failure of the petitioner to join the special scheduled for 24th December, 2002 had lapsed and was cancelled by railways for which the FCI suffered huge financial losses. The petitioner was again asked by telegram dated 25th December, 2002 to make arrangements for loading of foodgrains Special on 30th December, 2002, but he did not turn up, on account of which the Special Schedule for 30th December, 2002 also lapsed. The respondents also deny that the risk and cost arrangements have been made through the outgoing contractor.

(5) The petitioner has filed a replication. The stand taken in the writ petition has been reiterated. It is stated that Annexure P-3 is not a false and fabricated document. The averments made to this effect by the respondents are denied. It is further stated that when the petitioner appeared before the SDM, he made a statement that he had already submitted the joining report at the Food Storage Depot at Nakodar, but was not allowed to join. On 9th December, 2002, respondent No. 5 was called by the SDM and advised to permit the petitioner to join, but again the petitioner was not permitted to join. Thereafter, the sequence of events narrated in the petition are reiterated. It is stated that in spite of the advice of the SDM, respondent No. 5 was adamant not to permit the petitioner to join. Under this compulsion, the petitioner had sent the joining report on 11th December, 2002 through courier. It is further stated that since the Assistant Manager was adamant in not permitting the petitioner to join, it is not surprising that the same is not mentioned in the despatch register. The petitioner also denies the averments of the respondents

that the telegram, Annexure R4 is dated 29th October, 2002. The stamp on the top of the telegram bears the date of 29th November, 2002 and 30th November, 2002 at the bottom i.e. the date of the receipt of the telegram.

(6) As noticed earlier, at the time of arguments, learned counsel for the respondents has raised two preliminary objections. He has submitted that the writ petition deserves to be dismissed as it involves disputed questions of fact. In support of this submission, learned counsel relies on a judgment of the Supreme Court rendered in the case of **Kerala State Electricity Board and another versus Kuriene Kalathil and others** (1). Learned counsel has further submitted that this Court cannot grant any relief to the petitioner as it would amount to specific performance of the contract. The claim of the petitioner can be duly compensated by grant of damages. In such circumstances, even the Civil Court would not be competent to grant the relief of Specific Performance, as it would be barred under Section 14(1)(a) of the Specific Relief Act, 1963. No mandamus can be issued for the specific performance of the contract by the High Court in exercise of jurisdiction under Articles 226/227 of the Constitution of India. In reply, Mr. Patwalia has, however, submitted that since the aforesaid objections were not taken in the written statement, the respondents cannot be permitted to raise the objections at this stage. No material has been placed on the record by the respondents in support of the preliminary objections which have been raised. Even otherwise, the writ petition does not involve any disputed questions of fact. In fact the entire relevant material is on record to enable the petitioner to make a prayer for the relief claimed.

(7) We have noticed the pleadings at length, to satisfy ourselves as to whether there is any substantial dispute on facts. It is undoubtedly true that this Court, whilst exercising jurisdiction under Articles 226/227 of the Constitution of India, would not investigate complicated disputes with regard to facts. But this is a rule of practice and caution adopted by the High Courts. Generally speaking, this Court would be slow to interfere in matters where an indepth investigation may be necessary on facts which are disputed. However, in the present case,

(1) 2000 (6) S.C.C. 293

we find that the basic facts on which the petitioner claims the relief are well-established on the record. From a perusal of the pleadings noticed above, it becomes apparent that :—

- (i) The petitioner is an established contractor with the FCI.
- (ii) The petitioner is executing contracts from other depots of the FCI in districts Kapurthala and Ropar.
- (iii) The contract for Nakodar was granted to the petitioner for a period of two years with effect from 5th October, 2002 till 4th October, 2004.
- (iv) The petitioner is prepared to perform the contract at the rate of 158% ASOR.
- (v) The petitioner deposited the security on 25th October, 2002, but till date he has not been permitted to execute the contract.

(8) From a reading of the aforesaid facts, we are satisfied that the petitioner is not in any manner responsible for non-performance of the contract.

(9) The observation of the Supreme Court in the case of Kerala State Electricity Board (supra) would be of no avail to the case put forward by the learned counsel for the respondents. In the aforesaid case, the Supreme Court held as follows :—

“10. We find that there is a merit in the first contention of Mr. Ravat. Learned counsel has rightly questioned the maintainability of the writ petition. 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, we are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. 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. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order 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 by 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. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. This is a matter for adjudication by a Civil Court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.”

(10) In the aforesaid case before the Supreme Court, the action of the respondents was not impugned on the touchstone of Article 14. There were also no allegations of *mala fide*, bias, victimisation or favouritism. The dispute had already been referred to the Labour Court. The question involved was with regard to the interpretation to be placed on a clause of contract. It was disputed that the contractor had actually paid the revised wages. Even considering the aforesaid facts, the Supreme Court held that "If a term of contract is violated, ordinarily the remedy is not the writ under Article 226". We are of the opinion that the observations of the Supreme Court are consistent with the well-settled principles that in matters of contract, which involve resolution of complicated questions of fact, writ petition under Article 226 will not be the appropriate remedy. As we have noticed above, in our opinion, in this case the petitioner has clearly established the case pleaded in the writ petition. The grievance of the petitioner is that he has been unfairly and unreasonably prevented from executing the contract. Therefore, the Court has to examine as to whether respondent No. 5 has acted *mala fide*, arbitrarily and in breach of Article 14 of the Constitution of India.

(11) We also do not find merit in the submission of Mr. Garg that as the petitioner can be sufficiently compensated by grant of damages, therefore, no mandamus can be issued to the respondents directing them to permit the petitioner to execute remainder of the contract. Having noticed the manner in which the petitioner has been deprived of the opportunity to execute the contract, it would be putting a premium on the wrong already committed by respondent No. 5 to decline the relief to the petitioner. Generally speaking, and in normal circumstances, a writ petition under Articles 226/227 of the Constitution of India, would not be entertained, if the same is filed with the ulterior motive of avoiding the bar to the specific enforcement of a contract contained under Section 14(1) of the Specific Relief Act, 1963. Under this Section, the contract cannot be directed to be specifically enforced which is a contract for the non-performance of which compensation in money is an adequate relief. In the present case, the petitioner has challenged the wholly arbitrary and unreasonably action of respondent No. 5 in deliberately not permitting the petitioner to execute the contract. In such circumstances, it would be wholly inappropriate for this Court not to entertain the writ petition praying for a command to the respondents to execute *bona fide* the statutory duties which

they are bound to perform in accordance with law. The petitioner has entered into contracts with the respondents for transportation of foodgrains from different depots. For future competition, the petitioner would have to establish the earlier satisfactory performance in similar contracts. Denying the relief of *Mandamus* to the petitioner in the present petition would adversely affect the chances of the petitioner for competing for similar contracts with regard to other depots in the future. When glaring irregularities committed by Officers of Corporation, which is an instrumentality of the State, are brought to the notice of the High Court, it cannot stand as a mute spectator. The wholesome jurisdiction of this Court under Articles 226/227 of the Constitution of India to do substantial justice, in the facts and circumstances of a particular case, cannot be fettered by technicalities.

(12) We do not find any substance in the submission of Mr. Patwalia that the preliminary objections raised by the respondents cannot be considered as the same are not specifically pleaded in the written statement. Undoubtedly, it would have been more appropriate if the respondents had pleaded the preliminary objections in the written statement so that the petitioner would not have been taken by surprise. However, since the objections are purely legal in nature, we have permitted the learned counsel for the respondents to raise the same. It is worthwhile noticing that both the objections taken by the learned counsel for the respondents are not required to be supported by any further pleadings. The two preliminary objections can be taken on the basis of the facts pleaded by the parties. Therefore, no real prejudice has been caused to the petitioner by the preliminary objections being raised at the stage of arguments only.

(13) Serious allegations of *mala fide* have been made against respondent No. 5 in the writ petition. Mr. Patwalia has vehemently argued that respondent No. 5 is hand in glove with the local contractors and has deliberately prevented the petitioner from executing the contract. According to the learned Sr. Counsel, the contract has been deliberately handed over to the local contractor at an exorbitant rate of 245% ASOR.

(14) Mr. Garg has vehemently argued that the petitioner is entirely at fault. As noticed in the pleadings, the petitioner did not submit the joining report on the contract within the stipulated period.

He deliberately came to join at Nakodar while in fact he ought to have gone to Jalandhar office. He has further submitted that even if obstruction is being caused by the local contractors, the petitioner cannot legitimately claim that respondent No. 5 has failed to perform his duty. Repeatedly, the petitioner has been asked to execute the contract, which he has failed to do so. Mr. Garg has further submitted that even though the petitioner has deposited the security, it would not be possible to permit the petitioner to perform the remainder of the contract as it would cause unnecessary complications. It is also submitted by the learned counsel that the deductions are being made from the amounts due to the petitioner from the other contract as the work which was allotted to the petitioner is being done on a day to day basis through Jai Ram, contractor.

(15) We have considered the submissions made by the learned counsel for the parties. Undoubtedly, allegations of *mala fide* have to be proved by clear and cogent evidence. As noticed earlier, the petitioner is a *bona fide* contractor who was granted the contract after offering better rates than any other competitors. It also becomes evident that the petitioner has been prevented from performing the contract due to the law and order situations created by the local contractors. This fact is evident from the order passed by this Court on 28th November, 2002. Clear direction was issued to the District Magistrate, Jalandhar to look into and take appropriate steps. The matter was referred by the DM, Jalandhar to SDM, Nakodar for enquiry. The SDM has given the following categoric findings :—

“From

Sub Divisional Magistrate,
Nakodar.

To

District Magistrate,
Jalandhar.

No. 4661/2/30, dated 12th December, 2002.

**Sub. : Application from Harmesh Chand, S/o Shri Shiv Chand
r/o Bhedian, P.O. Kathgarh, Tehsil Balachaur, District
Nawanshahar.**

Shri Harmesh Chand, s/o Shri Shiv Chand, Village Bhedian Tehsil Balachaur, District Nawan Shahar was awarded contract of Transport Carriage (handling and transporting of goods) of F.C.I.

F.S.D. Nakodar. He gave his joining report at F.S.D. Nakodar but on dated 10th December, 2002, he was given police protection for joining but the Assistant Manager did not allow the said contractor to join. I wish to submit here that I called for the Assistant Manager on 9th December, 2002 and advised him that the joining report of the new contractor may be accepted as per law but he stated in a casual manner that he may give his joining report in his office. On dated 10th December, 2002, Harmesh Chand Contractor went to F.C.I. F.S.D. Centre alongwith the police protection for giving his joining report, but the Assistant Manager refused to accept the joining report. Here it seems that due to the connivance of the Assistant Manager F.C.I. F.S.D. Nakodar with the old contractors, he is not accepting the joining report. Thereafter, Harmesh Chand told me that he has given the joining report through courier. Harmesh Chand Contractor has requested that there is danger in his life, so he has demanded the police protection. So I recommend that police protection may be given to the new contractor and alongwith the same, legal action may be taken against the Assistant Manager, F.C.I. F.S.D. Nakodar who is not allowing for joining the duty.

Sd./-
Sub Divisional Magistrate,
Nakodar.”

(16) A perusal of the above shows that respondent No. 5 was given full opportunity to perform his duty and to permit the petitioner to join. The advice of the SDM was callously disregarded by respondent No. 5. The SDM was casually informed that the petitioner can submit joining report in the office of respondent No. 5. The petitioner went alongwith the police protection for giving joining report, but respondent No. 5 refused to accept the same. There is a categorical finding of the SDM that due to the connivance of the Assistant Manager, FCI FSD, Nakodar with the old contractor, he is not accepting the joining report. The petitioner even pleaded before the SDM that there is danger to his life. So he demanded police protection. The SDM has recommended that the police protection be given to the petitioner. It has also been recommended that legal action be taken against respondent No. 5, who is not allowing the petitioner to execute the contract. Respondent No. 5 has not cared to challenge the aforesaid remarks in any proceedings in any court of law. He has not even cared to file a reply

to the allegations of *mala fide* made in the present writ petition, even though he has been impleaded by name. Counsel for the respondents merely stated that a joint written statement has been filed. From the record it becomes apparent that the written statement has been filed by respondent No. 3. He cannot possibly be in a position to answer the allegations which have been made specifically against respondent No. 5. Since there is no reply to the allegations made in the writ petition against respondent No. 5, the same have to be accepted, as pleaded. Faced with this situation, Mr. Garg has pointed out that the report of the SDM asking respondent No. 5 to take the joining report of the petitioner is contradictory. The petitioner had claimed that he has submitted the joining report on 23rd November, 2002. Therefore, there was no occasion to ask respondent No. 5 to take the joining report on 12th December, 2002. We are unimpressed with the aforesaid submission. A perusal of the report which has been reproduced above, clearly shows that the SDM was making genuine efforts to settle the dispute. Merely because the joining report dated 23rd November, 2002 is not mentioned in the report Annexure P-8 would not lead to the conclusion that the report of the SDM is contradictory in nature.

(17) Mr. Garg has also placed strong reliance on the report submitted by a Committee of three Officers of the Food Corporation of India in which it is held that there is no irregularity on the part of the Assistant Manager (D) FSD, Nakodar in refusing to accept the joining report of the petitioner in the office of the SDM i.e. outside the depot premises as desired by the SDM, Nakodar. We are of the opinion that Mr. Patwalia has rightly submitted that the aforesaid report cannot be relied upon as the petitioner was not associated with the enquiry. Not only this, no notice was issued to the SDM also whose decision is sought to be nullified in the aforesaid enquiry report. It is also noteworthy that the enquiry report is not given by any higher authority of the Food Corporation of India. The Enquiry Committee consisted of G.S. Bhatia, Asstt. Manager (STG), D.K. Aggarwal, Asstt. Manager (A/CS) and Amarjit Kaypee, Asstt. Manager (Cont.) RTC, FCI DO, Jalandhar. These officers are of the same Rank as respondent No. 5. In our opinion, the report of this Committee is a mere eye wash which has only been given to nullify the findings recorded by the SDM, Nakodar.

(18) We are of the considered opinion that the action of respondent No. 5 in not permitting the petitioner to execute the contract is *mala fide* and therefore, wholly arbitrary and violates Articles 14 and 19 (1) (g) of the Constitution of India.

(19) Surprisingly, in a communication by the District Manager to, the Deputy Commissioner-cum-District Magistrate, Jalandhar on 21st December, 2002 justifying the action of respondent No. 5, it has been mentioned as follows :—

“At the moment the risk & cost arrangements have been suspended temporarily to prove an open opportunity to Shri Harmesh Chand to join and undertake the transportation work of Nakodar Centre. It is therefore, requested that Shri Harmesh Chand, S/o Shri Shiv Chand may kindly be suitably advised to join at Nakodar as T.C. for loading of foodgrains spls, scheduled for 24th December, 2002, 30th December, 2002 and thereafter for which this Office will extend all needed assistance/help in undertaking the work.”

(20) Taking a cue from the aforesaid, Mr. Patwalia has submitted that even at this stage, the petitioner is prepared to commence the work immediately. The petitioner is even prepared to make his own arrangement for the trucks. Mr. Garg, learned Sr. Counsel has, however, submitted that this would now causes too many complications. According to the learned Counsel for the respondents, the writ petition deserves to be dismissed.

(21) We are unable to accept the submissions made by Mr. Garg. It is by now a well-settled proposition of law that the State action even in the realm of contracts has to be fair, free from arbitrariness and must not be unreasonable. The State action also has to be free from malice in law. This view of ours finds support from the observation of the Supreme Court made in the case of **Mahabir Auto Stores and others versus Indian Oil Corporation and others** (2) which is as follows :—

“12.....In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable

and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down....”

(22) Again in the case of **Food Corporation of India versus M/s Kamdhenu Cattle Feed Industries (3)**, the Supreme Court has categorically laid down as follows :—

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is “fair play in action”. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions.....”

(23) We have examined the actions of respondent No. 5, keeping in view the principles of law laid down by the Supreme Court. As observed earlier, we find that the actions of respondent No. 5 are unfair and unreasonable, and therefore, cannot be justified under Article 14 of the Constitution of India. The work which was contracted to be completed by the petitioner at the rate of 158% ASOR is being got done on day-to-day basis from Shri Jai Ram at the rate of 245% ASOR. The huge difference in the rates, in our opinion, speaks volumes about the unfair treatment meted out to the petitioner. This huge difference in the rate is being deducted from the amount due to the petitioner for handling the transport contract at Kapurthala. Not only the petitioner has been deprived of the benefits of the legitimate contract lawfully granted to him, the respondent-Food Corporation of India has been put to huge loss. The deduction of the amount from the account of the petitioner at Kapurthala is without any sanction of law.

(24) In view of the foregoing discussions, we allow the writ petition. Writ in the nature of *Certiorari* is issued quashing the Order dated 17th January, 2003 (Annexure P-12) by which the contract of the petitioner has been cancelled and the order dated 30th March, 2003 (Annexure P-15) by which the District Magistrate, Kapurthala has been directed to recover the amount of Rs. 3,43,138 from the account of the petitioner at Kapurthala. Writ in the nature of *Mandamus* is issued directing the respondents to permit the petitioner to continue to work in pursuance to the contract awarded to the petitioner on 5th October, 2002. No costs.

(25) Copy of this order be given dasti on payment of usual charges.

R.N.R.

Before J. S. Khehar and M. M. Kumar, JJ.

MANJIT KAUR,—*Petitioner*

versus

M. D. U. ROHTAK AND ANOTHER,—*Respondents*

C.W.P. No. 18420 OF 2003

19th January, 2004

Constitution of India, 1950—Articles 14 and 226—Admission to B. Sc. (Nursing) Course—Petitioner qualified her Senior Secondary examination from National Institute of Open School recognised in Haryana—Cl. (I) of the prospectus requires that only those candidates would be considered eligible who have studied 10+1 and 10+2 classes as regular students—Cancellation of petitioner's candidature as she passed the examination from an Institution where regular classes are not being held—Expression 'regular'—Means—According to law, rule, established practice etc.—Not necessary that a candidate must have visited the school everyday by attending classes—No nexus with the object sought to be achieved by drawing distinction between a candidate who studied by attending regular classes and the other candidates—Cl. (I) of the eligibility criterion of the prospectus held to be arbitrary and violates Article 14 of the Constitution—Petition allowed while directing the Institute to consider petitioner's case for admission by treating her as eligible.