**Union Construction Co. (Private Ltd.) Vs. Chief Engineer, Eastern Command, Lucknow and anr.**

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**SooperKanoon Citation** : sooperkanoon.com/448534

**Court** : Allahabad

**Decided On :** Jul-14-1959

**Reported in** : AIR1960All72

**Judge** : Jagdish Sahai, J.

**Acts** : Constitution of India - Articles 32, 226 and 329; Contract Act, 1872 - Sections 28; Specific Relief Act, 1877 - Sections 12 and 21

**Appeal No.** : Civil Misc. Writ No. 2451 of 1958

**Appellant** : Union Construction Co. (Private Ltd.)

**Respondent** : Chief Engineer, Eastern Command, Lucknow and anr.

**Advocate for Def.** : K.B. Asthana, Standing Counsel

**Advocate for Pet/Ap.** : Gopinath Kunzru, ;Benarasi Das and ;A.N. Kaul, Advs.

**Disposition** : Petition dismissed

**Judgement** :
ORDER

**Jagdish Sahai, J.**

1. The petitioner the Union Construction Company (Private) Limited is a private limited company having its registered office in the city of Madras and is doing the business of a building contractor. It is registered as such with the Military Engineering Service (hereinafter called the M.E.S.), Eastern Command, Lucknow. During the years 1953-56 the petitioner entered into four building contracts with the military department (hereinafter referred to a,s the employer or the department) through the Chief Engineer. M.E.S., Eastern Command, Lucknow (respondent No. 1). The four contracts have been described by the letters, A, B, C and D in this judgment. According to the petitioner, the total value of the work order was Rs. 26,62,646 nP. The details of the date of tender, date of acceptance, value of work, date of work order, date of completion and the period of completion are given below:

S. No.Contract No. & particulars.Date of tender.Date of acceptance.Value of work.Date of work order.Date of completion.Completion period.A.CEEC/KAN/34 ot 52-53 construction of 54 'P' typeQrs. Kanpur.9-1-5329-1-53Rs. 980842-7112-5-5314-11-5418 months.B.CEEC/AGR/AFW; 27 of 54-55 construction of 280Followers Qrs. Agra.24-12-548-1-55576655.3724-1-5523-1-5612 months.C.CEEC/AGR/AFW; 26 of 54-55 Taxi Track Apron at Agra.22-2-5510-3-55904738-009-4-559-1-569 months.D.CEEC/AGR/AFW/ 26 of 54.55 construction of 127Followers Qrs, at Agra.29-12-533-1-56290110-6923-1-5623-1-5712 months.

2. Admittedly the works mentioned above could not be completed within the stipulated time. The petitioner's case with regard to the delay in the completion of the work under contract A is that though the tender was accepted as early as 29-1-1953, work order was not given to the petitioner till as late as 12-5-1953 in spite of repeated reminders by the petitioner for its being given earlier. The petitioner also alleges that certain alterations were made in the layout, design and specifications of certain buildings covered by this contract with the result that delay in the execution of the work was caused.

It is also complained that in the agreement deed the specifications for veneers, shutters and cupboards were not given and it was agreed that the same will be furnished at a latter date. The petitioner's case is that they were furnished with

considerable delay. It is further alleged that the employer had undertaken to supply certain material to the petitioner which was not supplied within the stipulated time and the department had nominated a sub-contractor under Clause 11 (b) of the agreement deed for the sanitary work and the said sub-contractor, did not complete the work assigned to him in time.

It is averred that 95 per cent of the work in connection with contract A was completed by 8-12-1955 and the responsibility for the non-completion of the remaining 5 per cent could not be fixed at the door of the petitioner but was due to the fault of the employer. It is complained that a sum of Rs. 1,25,000/- has been withheld by the employer which is due to the petitioner for the work already done in connection with this contract and neither the employer if paying that amount to the petitioner nor allowing it to complete the work covered by this contract.

3. With regard to contract B it is alleged that the delay was caused because the cement and the steel which the employer had to supply under the terms of the agreement were not supplied till 13 months after the tender was accepted. Even thereafter the employer made a change in the timber directing that deodar should be used instead of C.P. teak but a little after, changed its mind and reverted back to C. P. teak from deodar. It is further complained that on a second occasion the employer did not supply the steel which it had undertaken to supply and the sub-contractor did not supply the sanitary fittings. According to the petitioner the delay in the completion of the work covered by contract B was caused by the default and lapses including those mentioned above committed by the employer. It is alleged that a sum of Rs. 90,000/- is due to the petitioner from the employer and though bills had been submitted for the same payments have not been made.

4. In connection with contract C the petitioner's case is than it could not be completed up to 9-1-1956 as the site for the taxi track on which the construction was to be made was not handed over to the petitioner in time and further the employer committed delays and defaults in supplying material which it had undertaken to supply as also in respect of other matters. It- is complained that there was some mistake about the level of the apron and the alignment of the apex in the plan and it was only by 15-6-1955 that the mistake was corrected by

the department and that too only partially, no such correction haying been made in respect of the level of the apron near ithe southern side of the A.W.D. hangar which was corrected partly on 31-9-1957 and finally on 22-2-1958.

It is also alleged that in the work contracted included a culvert ithe approximate cost of which was Rs. 9,200/-. The employer altered its design in the first week of. March 1956 with the result that not only the work was delayed but the petitioner had to incur a cost of Rs. 16,269/- instead of the original cost of Rs. 9,200/-. It is averred that the employer added a new item called the 'Track Coat' and the petitioner started to work on it soon after it was added but it was stopped from, doing so by the employer in October 1955. It was after some time that the work was allowed to be restarted but it was again stopped on 28-7-1956 and it was only on 29-11-1956 that it was finally allowed to be constructed.

5. As regards contract D the petitioner's case is that the delay was caused because bricks were controlled and the quota of bricks which the petitioner was receiving was not sufficient to complete the constructions. It is also complained that the employer did not supply the steel which it had agreed to supply for a period of four months and even when the employer did so it did not supply the exact articles mat were needed. It is alleged that the employer supplied flat iron for the holdfast but freezed it on 20-10-1956. The employer has been accused of several other defaults and lapses which it is not necessary to mention in this judgment. According to the petitioner a sum of two lacs of rupees is due to it from the employer in connection with contacts C and D which has not been paid and the payment has been refused, according to the petitioner, 'under pretext of claim for compensation.'

6. It is also complained that the respondents have refused to take over the buildings that have already been completed 'on the false pretext that the work is not complete.' On 9-8-1958 the respondent No. 1 sent a notice purporting to be under Clause 54 of the building agreement (contract) threatening cancellation of the contract as from 25-8-58 and to get the balance of the work comprising the incomplete items of work and work not carried out according to contract specifications done by other agencies at the risk and the cost of the petitioner.

On 2-6-1958 the acting Chief Engineer, purporting to exercise his powers under Clause 54, cancelled the contract 'B' and asked the petitioner to vacate the site within three days from the receipt of the said letter. On 3-7-1958 another letter was sent to the same effect. It is complained that the respondents have also illegally seized large quantities of the petitioner's stores valued at about Rs. 50,000/-. On 16-6-1958 the respondent No. 1 cancelled the agreement with regard to the contract 'D'.

On 4-7-1958 the same respondent served another notice on the petitioner asking it to vacate the site of the proposed constructions contemplated by the contracts 'C' and 'D'. On 9-8-1958 the respondent No. 1 sent another letter to the petitioner, this time informing is that in case the work was not completed bv 25th August the contract 'A' would be cancelled. The respondent No. 1 has published as advertisement in the issue of the newspaper 'Tribune' dated 12-8-1958, calling for tenders in respect of the contract 'C'. The petitioner submitted a memorandum to the Defence Ministry on 16-6-1958 but received no reply.

7. On these facts the present petition has been moved. The prayer is for the issue of an order, direction or writ in the nature of certiorari cancel-ling the orders of the respondents, one dated 2-6-1958 and two dated 16-6-1958 cancelling contracts B, C and D the letter No. 980004/20/ 386/E-8 dated 9-8-1958 and the orders dated 3rd and 4th July, 1958. There is also a prayer for the issue of a writ, order or direction in the nature of mandamus directing the respondents not to cancel contract 'A' and to take possession of the four blocks which have already been completed. It is also prayed that a suitable writ, direction or order be issued directing the respondents not to get the work completed through anv other agency and to allow the petitioner, to complete the same and further to pay the bills of the petitioner outstanding against the Government.

8. In the petition as also in the affidavit filed in support of it the various acts of omission and commission alleged to have been committed by the respondents as also the various defaults committed bv them have been mentioned. It is also stated in detail as to in what manner the petitioner was prevented from completing the work in time by the respondents. It is not necessary to go into those details

and I would refer to such of the allegations, if any, which are material for the decision of the case at the proper place in this judgment.

9. A counter affidavit has been filed which is sworn by Col. S. R. Nautiyal, Deputy Chief Engineer, Headquarters, Eastern Command, Luck-now. It is stated therein that in the chart given by the petitioner giving the details of the various contracts some mistakes have been committed. In the counter affidavit a separate chart is given but it is not necessary to reproduce it because tthe mistakes alleged to have been committed by the petitioner do not in any manner affect the decision of the case. It is also pointed out in the counter affidavit that the total value of the work ordered by the four contracts was Rs. 26. 67, 646.68 n.P. and not Rs. 26,62,646.68 n.P. and that none of the contacts was for a sum of more than ten lakhs of rupees.

It is also alleged that the rates of issue of material which the employer had undertaken to supply have wrongly been given in annexure 'I' of the petitioner's affidavit. What according to Col. Nautiyal were the correct rates have been given in annexure 'A' filed along with the counter affidavit. It is admitted that the first work order was not given to the petitioner earlier than 12-5-53 but it is alleged that the 18 months period for completion of the work given in the agreement was to count from 15-5-53 and thus according to the counter affidavit the petitioner did not suffer in any way nor did it lodge any protest.

In fact it is alleged that the pe'itioner accepted the first work order willingly on 14-5-53. The petitioner's allegation than it was required to suspend the work has been admitted but it is alleged that the time lost due to the suspension of the building operations was allowed to the petitioner as the period of completion was correspondingly expended by the employer by the period for which the suspension operated. The petitioner's allegation that the employer nominated a sub-contractor has been accepted but it is further stated that the sanitary works were completed by the sub-contractor within time and such defects as were left in the construction were rectified by him also within time.

The petitioner's allegation that the delay in laying of Mosaic floor was due to the fault of the sub-contractor has been controverted and it has been stated that the

fault entirely was that of the petitioner. It is also alleged that the petitioner never objected to the nomination of the particular sub-contractor. Whatever delay was caused by the sub-contractor was fully compensated by the grant of extension of time to the petitioner. The case set up in the counter affidavit is that in terms of condition 18 of IAFW-2249 the contractor is responsible to the Government and 'nothing can relieve or absolve him of his liability in respect of the sub-contract under the conditions of the contract.

The petitioner's allegation that the work that remained to be completed in connection with the contrac; 'A' was due to the default of the employer has been controverted and several facts have been given in support of the denial. It is also alleged that the petitioner got time extended several times on his own request and whenever the employer extended the time it did so with the consent of the petitioner after having obtained the signature of some one on behalf of the petitioner with regard to that extension. The petitioner's allegation that the employer has withheld a sum of Rs. 90,000/- has been controverted. It is also alleged that the bills which the petitioner submitted were incorrect and by the date of the cancellation of the contact the petitioner had not completed 90 per cent, of the work as alleged by it.

The counter affidavit goes on to say that the petitioner could have purchased fifteen thousand bricks per month from each of the several kiln-owners at Agra and had it exercised forethought and proper planning there would not have been any difficulty in procuring the requisite number of bricks in proper time. The employer supplied to the petitioner coal dust on payment to make it easier for it to procure bricks and if it could not procure the bricks it itself is to be blamed. It is also alleged that the employer committed no default and the delay in completing the constructions was entirely due to the fault of the petitioner.

All the four contracts had been running for some time under compensation Clause in December 1956. It is seated that the amount of work done after 15-6-57 and up to October 1957 under the contracts 'C' and 'D' was approximately Rs. 1,72,600 and not Rs. 2,00,000/-. On contract 'C' four running payments were made to the petitioner after June 1957 to the extent of Rs. 63,100/- after deducting the cost of

materials, hire charges in respect of plant and other miscellaneous charges such as water, house rent etc., and keeping 10 per pent, as retention money in terms of the contract. On contract 'D' two running payments were made to the petitioner after June 1957 to the extent of Rs. 16,000/- after deducting all charges as mentioned in respect of contract 'C'.

The case of the employers as set forth in the counter affidavit is that they had to serve notices on the petitioner intimating it that its contracts would be cancelled if it did not complete the works by the specified dates as it was not possible to allow the petitioner to delay the completion of the work's sine die. It is also stated that the employers gave repeated extensions of time and also made payment of a sum of Rs. 50,000/- as a special advance. The petitioner could not make any progress in the work and time being the essence of the contract and it being apparent to the employers that the petitioner did not intend to make any further progress in the work the employer had no option but to cancel the contracts. It is also alleged that the Government has badly suffered on account of the delay caused in the completion of the works by the petitioner.'

10. A rejoinder affidavit has also been filed. It is not necessary to mention the various allegations made in the rejoinder affidavit. In fact I have also not mentioned all the allegations made in the affidavit and in the counter affidavit because, in my opinion, for the purposes of the order which I propose to pass, it is not necessary to mention the various allegations made in the three affidavits. It may however be stated that the allegations made in the affidavit, the counter affidavit and the rejoinder affidavit raise complicated questions of fact. After having carefully perused the three affidavits it appears to me that not only the facts mentioned therein are complicated ones but there is also a serious dispute about them.

I am satisfied that it is not possible to do justice between the parties on the basis of the material provided by the affidavits only, and considering the nature of the allegations made and the reliefs claimed it appears to me that it will be necessary to record detailed evidence including the statements of expert witnesses e. g., engineers and professional contactors which course is not possible to be adopted

in the summary proceedings of a writ where under the normal practice a petition has got to be decided on the basis of affidavits alone. It appears to me that in view of the paucity of material on the record and the conflicting versions of the parties it would be risky to hazard a decision in the present proceedings and the instant case is eminently fib for being decided by a civil court of original jurisdiction in an original trial. The view that I am taking finds support from the decision of their Lordships of the Supreme Court in the case of Union of India v. T. R. Varma : (1958)IILLJ259SC where it was observed as follows:

'. . . .On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross-examining the witnesses, who gave evidence in support of the charge. 'That is a question on which there is a serious dispute which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition. .....'

11. The next ground on which I have come to the conclusion that this petition should be dismissed is that the petitioner has got an alternative remedy of getting the matter referred to an arbitrator. Clause 68 of the agreement deed reads as follows :

'68. Arbitration. -- All disputes, between the parities to the Contract arising out of or relating to the Contract, other than those for which the decision of the C. W. E. or of any other person is by the Contract expressed to be final and conclusive, shall after written notice by either party to the Contract to the other of them be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

Unless the parties otherwise agree, such reference shall not take place until after the completion, alleged completion or abandonment of the Works or, the determination of the Contract.

The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final, conclusive and binding on both parties to the Contract.'

12. It is customary to insert such Clauses in all building and engineering contracts both in this county as also in England, It is nobody's case that the aforesaid Clause is not operative and the contract has been broken up either by the conduct of the parties or by the refusal of persons who would be the likely arbitrators to arbitrate.

13. Though Mr. Kunzru learned Counsel for the petitioner has not disputed the existence of such a Clause in the agreement deed his contention is that the conditions pre-requisite for an arbitration contemplated by Clause 68 do not exist in the present case. I am unable to agree with him on this point. It is true that Clause 68 provides that an arbitration shall take place only after the completion, alleged completion or abandonment of the works or the determination of the contracts.

Whereas in my opinion Mr. Kunzru is right in his submission that there has neither been a completion nor abandonment of the works, he is not correct when he says that there has been no determination of the contracts either. The respondents gave notice to the petitioner terminating the contracts. The petitioner itself came to this Court on a very clear allegation that the contracts have been illegally terminated and after reading, the petition, the affidavit filed in support of it, the counter affidavit and the rejoinder affidavit no doubt is left in my mind that it is the common case of the parties that the contracts have been terminated. The case of Smith v. Martin. (1925) 1 KB 745 does not help the petitioner because the agreement that came up for consideration in that case did not provide for a reference to arbitration on the ground of determination of the contract. There the relevant words were that

'such reference, except on the question of certificate, shall not be opened until after the completion or alleged completion of the works, unless with the written consent of the employer or architect and the contractor.'

In our case a reference to arbitration is possible not only after the completion of the works but also when the contracts have been determined. The English case mentioned above therefore cannot be of help to the petitioner. In my opinion the conditions pro-requisite for a valid reference to arbitration exist in the present case and it is not possible to say that a reference is premature. The petitioner has thus got a clear alternative remedy.

14. In this connection Mr. Kunzru has next contended that Clause 68 of the agreement is void because it provides that 'the award of the Arbitrator shall be final, conclusive and binding on both parties to the Contract.' It is contended that inasmuch as this Clause operates to bar absolutely the jurisdiction of the ordinary tribunals it falls within the mischief of Section 28 of the Indian Contract Act and is consequently void. It is further contended that inasmuch as this Clause is void, the parties are relieved of the necessity of having recourse to arbitration and this Clause cannot be the basis of an alternative remedy in the present case. The relevant portions of Section 28 of the Indian Contract Act run as follows:

'Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1 -- This section shall not render illegal a contract by which two or more person agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2 -- Nor shall this section render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.'

Though under exception 1 of Section 28 of the Contract Act a contract by which two or more persons agree that any dispute which may arise between them in

respect of any subject or class of subjects shall be referred to arbitration is not invalid, a contract which stipulates that the decision of the arbitrator shall be final and conclusive and which thus bars the jurisdiction of the ordinary tribunals from examining the validity of the award is void, and, notwithstanding that Clause, the Court's would have jurisdiction to examine the validity of the award in a properly framed proceeding.

The contract to refer to arbitration is not void because that of itself could not have the effect of ousting the jurisdiction of the Courts but the stipulation making the award conclusive and final becomes void as those words have the effect of excluding the jurisdiction of the ordinary Courts (see The Coringa Oil Co. Ltd. v. Koeglar. TLR 1 Cal 466; Mulji Tajsingh v. Ransi Devraj, ILR 34 Bom 13 and Ranga v. Sithaya, ILR 6 Mad 368)

However, tentatively speaking, even 'though' the Clause making the award final and conclusive does appear to be void, it is clear that the whole of cl, 68 does not become void as the sub-clause making the award final and conclusive is separable from the main Clause which makes a reference to an arbitrator imperative. The existence of the sub-clause or the fact that the sub-clause appears to be void does not in any way affect the right of the parties to have recourse to arbitration and does not make a reference to an arbitrator any the less an alternative remedy.

15. It was contended by Mr. Kunzru very strenuously that the jurisdiction of this Court under Article 226 of the Constitution is not barred because of the mere existence of an alternative remedy. While considering the scope of the various writs it was held by their Lordships of the Supreme Court in the case of U. P. State v. Mohd. Nooh, AIR 1958 SC 86 as follows:

'In the next place it must be borne in mindthat there is no rule, with regard to certiorari asthere is with mandamus, that it will lie only wherethere is no other equally effective remedy. It iswell established that, provided the requisite groundsexist, ccrtiorari will lie although a right of appealhas been conferred by statute.'

It is not necessary to multiply cases on this point.Suffice it to say that it is a well established rule that a writ of mandamus will be refused if thereIs an alternative remedy. In the present case thereis a prayer for the issue of a writ of certiorari asalso for the issue of a writ of mandamus. In my.opinion the prayer for the issue of a writ of certiorari in the circumstances o.f the present caseis clearly untenable. It is well known that a writof certiorari lies for quashing of orders or proceedings of an inferior court or other persons or bodiesexercising judicial or quasi-judicial functions. Theorders that the petitioner wants to get quashed bymeans of a writ of certiorari have not beenpassed by a judicial tribunal or by anauthority acting judicially or quasi-judicially.The prayer is for the quashing of the orders cancelling the various contracts. Those orders are administrative ones. If was held in thecase of State of Bihar v. D. N. Ganguly AIR 1953SC 1018 that a writ of certiorari is not a properwrit against administrative orders- Their Lordshipsof the Supreme Court have expressed themselvesin the following words in that case:

'That takes us to ithe question as to the formin which the final order should be passed in thepresent appeals. The High Court has purported to issue a writ of certiorari against the State Government quashing the impugned notification. It has,however, been held by this Court in State of Madras v. C. P. Sarathy : (1953)ILLJ174SC that in making a reference under Section 10(1) theappropriate government is doing an administrativeact and the fact that it has to form an opinion asto the factual existence of an industrial dispute asa preliminary step to the discharge of its functiondoes not make it any-the-less administrative incharacter. That being so, we think it would bemore appropriate to issue a writ of mandamus against the appellant in respect of the impugned notification.'

It is clear therefore that the only tenable prayerof the petitioner could be for the issue of a writof mandamus. I have already quoted above theobservations of their Lordships of the SupremeCourt in the case of Mohammad Nooh AIR 1958SC 86 wherein it has been clearly stated that analternative remedy is a bar to the issue of a writof mandamus. That being so the contention of Mr.Kunzru cannot be accepted.

16. Mr. Kunzru has next contended that in England or America the existence of an alternative remedy has not been considered to be a bar to the issue of a writ of mandamus, It is really not necessary for me to investigate into the practice prevailing in England or America in view of the clear pronouncement of their Lordships of the Supreme Court in Mohammad Nooh's case AIR 1958 SC 86. I may however add that the statement of law as contained in the well known book 'Extraordinary Legal Remedies' by Ferris and in Halsbury's Laws of England, Vol. 11 (Simond's Edition) does show that the existence of an alternative remedy has been considered a bar to the issue of a writ of mandamus. I am reproducing below a passage from Ferris, 1926 Ed. p. 245, Article 212:

'Mandamus will not, subject to the exercise of a sound judicial discretion, issue where there is another adequate and specific legal remedy competent to afford relief upon the same subject-matter.'

At page 107, paragraph 200, Vol. 11 of Halsbury's Laws of England (Simonds Ed.) the. law on the point has been stated as follows:

'The Court will, as a general rule, and in the exercise of its discretion, refuse an order of mandamus, when there is an alternative specific remedy at law which is not less convenient, beneficial, and effective.'

17. But quite apart from the question whether or not the existence of an alternative remedy is an absolute bar to the issue of a writ of mandamus, it is well known 'that normally a Court would not be justified in issuing it when there is a clear alternative remedy and when there is no complaint of the breach of a fundamental right. In the circumstances of the present case there can be no justification whatsoever for by-passing the remedy provided by arbitration and issuing a writ. I have already indicated in an earlier part of this judgment that under the provisions of Section 28 of the Indian Contract Act an agreement by which a particular matter has got to be decided in arbitiration proceedings is permissible. The last Clause of Section 21 of the Specific Relief Act runs as follows:

'And save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person

who has made such a contract other than an arbitration agreement to which the provisions of the said Act apply and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit,'

The effect of this provision is that a suit would be barred where there is a contract by which a matter has got to be decided by an arbitrator. This was the interpretation placed upon the last clause of Section 21 of the Specific Relief Act by this Court in the case of Sheoambar v. Deodat, ILR 9 All 168 and in the case of Sheodat v. Sheoshankar Singh, ILR 27 All 53. I respectfully follow these cases.

18. It is true that the constitution is supreme and all legislative enactments and executive acts are subject to its provisions. It is also well established that limitations cannot be placed upon the powers granted to this Court under Article 226 of the Constitution of India except those which are provided by the constitution itself e.g., Article 329 which bars the jurisdiction of all Courts including the High Courts and the Supreme Court under the circumstances mentioned in that provision.

Inasmuch as no limitations have been placed by the Constitution upon the powers of this Court in deciding matters which under an agreement have got to be decided by an arbitrator, there can. in my opinion, be no legal hurdle in the way of this Court in exercising its jurisdiction under Article 220 of the Constitution of India in the present case. There is abundant authority for the proposition that no legislative enactment either of the Parliament or of a State Legislature can in any way restrict the power of this Court in passing orders under Article 226 of the Constitution of India (see Raj Krushna v. Binod Kanungo : [1954]1SCR913 , and Asiatic Engineering Co. v. Acchru Ram : AIR1951 All746 .

19. That being so, it is not possible to hold that the jurisdiction of this Court is barred under Article 226 of the Constitution of India because of the existence of the arbitration Clause (Clause 68 of the agreement). Even though it is so, in my opinion, the petitioner should be directed to have recourse to arbitration in the present case for two reasons. In the first place the scheme of the Legislature is that law Courts should not decide a matter which under an agreement or a statute

has got to be decided by an arbitrator only and I see no reason why I should not respect that legislative intent. Secondly, the petitioner itself was a party to the agreement under which the matter has got to be referred to an arbitrator and it does not appear tome either just or proper that the petitioner should be allowed to wriggle out of the agreement which its own hand has willingly executed. In the Division Bench case of this Court, Brij Lal Suri v. State of U. P. AIR 1954 411 393 1954 411 393 , Sapru J., observed as follows while considering the question of an alternative remedy:

'Now it is well known that where the parties have chosen under an agreement to refer their disputes to arbitration, Courts will insist that they, should have recourse to arbitration before pursuing any other remedy.'

I am in respectful agreement with this view.

20. For the reasons mentioned above I am of the opinion that the petitioner clearly has got an alternative remedy of getting the matter referred to an arbitrator.

21. Even if it be assumed, though I have held! to the contrary, that reference to arbitration in the circumstances of the present case is not possible, I see no reason as to why the petitioner cannot file a suit. The reply of Mr. Kunzru is that he cannot get the same relief by means of a suit which he has asked for in this petition and the relief which he may obtain by means of a suit will be wholly inadequate. It is true that under the provisions of Section 21 (a) of the Specific Relief Act 'a contract for the non-performance of which compensation in money is an adequate relief' cannot be specifically enforced. Under the provisions of section 12(c) of the same Act 'when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief,' specific performance of the contract may, in the discretion of the Court be enforced. This clearly shows that the Court can exercise the discretion only in a case where pecuniary compensation would not afford adequate relief. Under Clause (b) of Section 21 of the Specific Relief Act a contract

'which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific

performance of its material terms'

cannot be so enforced. The present contracts are building or engineering contracts. It would require technical knowledge and long experience in the line for executing the works covered by the contracts. It is thus a contract which is dependent on the personal qualifications and volition of the parties and is also of such a nature that the Court cannot enforce specific performance of its material terms. For that reason also the present agreement cannot be specifically enforced. In the case of Dewan Chand v. Union of India, AIR 1951 Punj 426 Kapur, J., observed as follows:

'In a building contract it is difficult for Courts to look after the acts and conduct of a building contractor nor can it say how far he does or does not depart from the correct execution of the works which he is professing to execute and where the case is one in which the personal skill of a person is an important factor the Courts will not be able to specifically enforce it. Besides in a building contract if a contractor is lawfully dismissed he has the remedy of getting compensation by way of damages and in such cases specific performance will not be given by Courts.'

I respectfully agree with the observations made above. A similar view was taken in the case of Ramchandra Ganesh v. Ramchandra Kondaji, ILR 22 Bom 46.

22. It cannot be denied that the petitioner can be compensated in money for the non-performance of the contract in the present case. The petitioner had taken the contracts with a view to. make profit. It was interested in the contracts only with a view to earn money and it should not matter to the petitioner if it obtains that money by way of damages by filing a suit for the same instead of earning it as profit after completing the contract. To me therefore in appears that in the circumstances of the present case compensation in money can be an adequate relief to the petitioner. The Privy Council in the case of Ramji Patel v. Rao Kishore Singh AIR 1929 PC 190 observed as follows:

'In view of the finding that compensation in money is an adequate relief to the Plaintiff and in view of the express provisions contained in sections 12(c) and 21(a), their Lordships are of opinion that a decree for specific performance of the

contract should not be made.'

23. The result of what I have said above is that though there may be some difficulty in the way of the petitioner in filing a suit for specific performance of the contract there can be no difficulty in its way in filing a suit or suits for damages and suit! or suits for damages, in my opinion, would be an alternative remedy for the purposes of Article 226 of the Constitution of India.

24. Apart from the faqt that the petitioner has got alternative remedies the petition is also liable to be dismissed on the ground that the right which the petitioner wants to enforce by means of a writ is founded purely on a contract It is well established that in England and America Courts do not issue a writ or an order of mandamus in a case like the present one. On page 229 (1926 Ed.) of the hook 'Extraordinary Legal Remedies' by Ferns the law has been stated in the following words:

'Contract Rights: The duties enforceable by mandamus, although not necessarily public duties, are those imposed by law. Mandamus will not lie therefore to enforce a right founded purely on private contact, however clear that right may be.'

In the same book at page 351 it is again stated as follows:

'Article 281. Tn General. It is well settled that duties imposed on corporations, not by virtue of express provision of law or charter, or necessarily arising from the nature of the privileges or obligations conferred, but arising out of private contractual relations involving no question of public trust or duty, will not be enforced by mandamus, either against the trustees or the corporation. The aggrieved party is left to his ordinary remedies, either at law or equity. This is necessarily so. for mandamus is limited to the enforcement of obligations imposed by law; and for the further reason that the writ cannot be substituted for a decree of specific performance in equity. So mandamus will not lie to compel a corporation to supply water for irrigation purposes, where the, right thereto rests on the contractual relationship of stock-holder in the company. If is generally held that the right to receive a diploma from a private corporation rests on a private contract relation, and that mandamus will not lie. Where petitioner contracts with a

private medical college, completes his course, pays the required fees, and performs all the conditions of his contract, and is then refused a diploma, the case is one purely of breach of contact, and mandamus will not lie, as there is an adequate remedy by a suit in equity for specific performance. The same rule is held to apply as to the right to attend a private incorporated institution of learning, as where it is sought to compel reinstatement as a student in a nurses' training school, or to reinstate a physician as a member of the medical staff of a private hospital association, when the right is based on private contract; and the apparent hardship of the particular situation, because there may be no other remedy, is held not a sufficient reason for departing from the general rule.'

In Halsbury's Laws of England, Vol. 11, at p. 105 (Simonds edition) the statement of law on this point reads as follows:

'195. Duties must be public. The order is only granted to compel the performance of duties of a public nature. It will not, accordingly, issue for a private purpose, that is to say, for the enforcement of a merely private right.' The Court will not, therefore, interfere in cases of dispute between members of private corporations, even though carrying on business under a royal charter,'

Again, at p. 84 of the same book it is stated as follows:

'159. The order of mandamus is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty.'

It cannot be denied than in England and America the law is that a writ or order of mandamus cannot issue to enforce legal rights flowing from contracts between private parties or corporations.

25. Mr. Kunzru has in this connection submitted that whatever may be the law on the subject in England, in India we have to go by the provisions of Article 226 of the Constitution of India. It is contended that the phraseology of Article 226 is very

wide and a High Count under that Article has the power to issue to any person directions, orders or writs including writs in the nature of habeas corpus, mandamus etc., for any purpose and therefore this Court can in a suitable case issue a writ of mandamus without having regard to the English or American practice with regard to such a writ. It is true that the language of Article 226 is very wide and no limitations have been imposed on these powers but 'once the origin and history of the High Prerogative Writs are remembered, it is clear that the powers given to a High Court under Article 226 are to be exercised in accordance with the principles which governed the said writs. The power of the High Court to issue such a writ (to 'any person' can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words 'and for any other purpose' must mean 'for any other purpose for which any of the writs mentioned would, according to well-established principles, issue,' (see Carlsbad Mineral Water Manufacturing Company v, H. M. Jagtiani' : AIR1952 Cal315 ). The Madras High Court also in the case of Indian Tobacco Corporation v. State of Madras : AIR1954 Mad549 took a similar view with regard to the scope of Article 226 of the Constitution. Relying upon the case of : AIR1952 Cal315 (supra) the Madras High Court observed as follows:

'It is undoubtedly true that the extent of the power conferred on the High Courts under Article 226 is much larger than they ever possessed before. But we have no hesitation in holding that it is not an unlimited power. In our opinion the words 'to any person' mean 'to any person to whom according to well-established principles writs like those mentioned in the article would lie; and the words 'any other purpose' must be read in the context in antithesis to the words 'for the enforcement of any of the rights conferred by Part III.' Obviously, writs like 'Habeas Corpus,' mandamus and 'certiorari' could1 be issued not only for the enforcement of any of the fundamental rights, bub also for the enforcement of other legal rights, subject however to conditions well established. To give an instance, the writ of prohibition has always been understood as a writ which could issue only to a judicial or quasi-judicial tribunal or an inferior court. Surely, it cannot be said that now under Article 226 a writ in the nature of prohibition could issue even to a private person

prohibiting him from doing some, act which is likely to injure an applicant.'

26. In my opinion the law in India on this point is not different from that prevailing in England and America. In the case of Commissioner of Income-tax v. Bombay Trust Corporation Ltd. their Lordships of the Privy Council observed as follows:

'Before mandamus can issue to a public servant it must therefore be shown that a duty towards Ithe applicant has been imposed upon the public servant by statute so that he can be charged thereon, and independently of any duty which as servant he may owe to the Crown, his principal.'

This case was followed by a Division Bench of tha Calcutta High Court in the case of P. K. Banerjee v. L. J. Simonds : AIR1947 Cal307 and Gentle J., while considering this case observed as follows:

'Their Lordships make no reference to a right under contract being enforceable by Mandamus; they clearly enunciate that the duty imposed upon a public servant, which can be tthe subject of Mandamus is a statutory duty. With respect, I prefer to follow the decision expressed in Ex parte Pering (1836) 4 Ad. and El. 949 rather than to give effect to the other English cases, which is in accord with the judgment of the Board by which I am bound. Even if the respondents had been parties to the appellant's contract, any duty or obligation falling upon them out of the contract cannot be enforced by the machinery of Section 45.'

27. If is true that the case of : AIR1947 Cal307 (supra) is a direct authority on Section 45 of the Specific Relief Act and the provisions of Article 226 of the Constitution of India have not been considered in that case. That case however, as far as I know has not been distinguished or dissented from at any subsequent stage and in fact has been followed several times even while considering the scope of Article 226 of the Constitution of India. The Calcutta High Court followed it in the case of : AIR1952 Cal315 (supra) as also in the case of Dubar Goala v. Union of India : AIR1952 Cal496 . The Madras High Court followed it in the case of : AIR1954 Mad549 (supra). The Punjab High Count followed it in the case of Chattar Singh v. State of Punjab . Kapur, J., who delivered the judgment in the Punjab case also relied upon : AIR1952 Cal496 (supra). The Madhya Bharat High

Court followed that decision in the case of Laxman Singh v. Raj Pramukh of Madhya Bharat, AIR 1953 Madh-B. 54. The Patna High Court in the case of B. B. Light Rly. Co. v. State of Bihar : AIR1951 Pat231 took a similar view though in that judgment reliance was not placed upon : AIR1947 Cal307 (supra).

28. Mr. Kunzru has cited some cases before me. I shall consider each one of them separately. The first case on which he has placed reliance is that of State of Orissa v. Madan Gopal : [1952]1SCR28 . In this case the Orissa High Court had, without admitting the five writ petitions which gave rise to the appeal before the Supreme Court, passed interim orders. While allowing the appeal the Supreme Court set aside the orders of the Orissa High Court on the ground that inasmuch as the petitions had been dismissed there could be no jurisdiction for passing interim orders.

29. The second case on which Mr. Kunzru has placed reliance is that of Nuraddin Ahmed v. State of Assam (S) AIR 1956 Assam 48. The facts of that case were that in conformity with the rules relating to auction of fisheries a proclamation was issued by the Deputy Commissioner, Cachar, to the effect that fishery No. 11 along with other fisheries would be sold by public auction on a certain date. On that date other fisheries were auctioned but not fishery No. 11 and later on that fishery was settled directly (without recourse to public auction) with another person whereupon a writ petition was filed in the Assam High Court. That Court set aside the settlement in favour of the third person and directed that the fishery be settled in accordance with the rules. The ground on which the petition was allowed was that statutory rules had been disregarded.

30. The third case on which reliance has been placed by Mr. Kunzru is that of S. C. Prashar v. Vasantsen Dwarkadas : AIR1956 Bom530 . That was a case under the Indian Income-tax Act and there is nothing in that judgment to support the contention of the learned counsel for the petitioner.

31. The next case on which, Mr. Kunzru placed reliance is that of Ramphal Singh v. State of Bihar : AIR1954 Pat235 . In that case a ferry was sold by public auction in compliance with the statutory rules to the petitioner of that case who was the highest bidder and who not only deposited the initial amount but also paid up

within time the full amount for which the ferry was auctioned and got a registered Kabuliat executed in his favour. The Sub Divisional Magistrate, however, settled the ferry directly (without having recourse to auction) with another person whereupon a writ petition was filed in the Patna High Court which was allowed on the ground that the settlement of the ferry with another person was in disregard of the statutory provisions,

32. The last on which reliance has been placed is that of C. P. M. Ore Co. v. State of Madhya Pradesh, Nagpur, ATR 1956 Nag 34. In that case the petitioner had obtained a mining lease of certain land from the C, P. Government for a period of thirty years. Subsequently he was also granted permission to use two fields lying contiguous to the mining area for the subsidiary purpose of dumping the soil from the mine on payment of a rent to the Government and a certain sum by way of compensation to the surface owners of the fields. In 1951 the State Government granted a prospecting licence to the respondent No. 2 (of that case) over some land including the two fields mentioned above. A writ petition in the Nagpur High Court was moved and a writ of mandamus was issued on the ground that the petitioner having been granted a valuable right under Section 218(3) of the C. P. Land Revenue Act, the Government could not create a hostile right in favour of other persons without giving adequate notice to the petitioner and without hearing him.

33. No other case has been cited by Mr. Kunzru on this point. In my opinion, in none ot the cases on which he has placed reliance is has beeh decided that a right flowing from a contract can be enforced by the issue of a writ of mandamus. In my opinion there is no support for the submission of Mr. Kunzru and the consensus of judicial opinion in this country is that a writ of mandamus cannot issue to enforce a duty under a contract.

34. In this connection Mr. Kunzru has submitted that in England the rule, that a writ of mandamus cannot be issued to enforce a contractual obligation exists because there the Courts can pass a decree for specific performance of a contract. It is contended that in this country a decree for specific performance cannot be passed except as provided for by Sections 12 and 21 of the Specific Relief Act. The

argument of Mr. Kunzru is that since in this country it is very difficult, if not impossible, to obtain a decree for specific performance of a contract, we should be liberal in exercising our jurisdiction under Article 226 of the Constitution of India in such cases and should not follow the English practice where the same relief is given by the ordinary Courts without the High Court being called upon to issue a prerogative writ or an order of that nature.

I have already said about that the consensus of judicial opinion in this country is that a writ of mandamus cannot be issued in a case of contractual obligation. But apart from it, in my opinion, it is not quite correct for Mr. Kunzru to say that in a case like the present one a decree for specific performance of the contact can be more easily got in England than in India. So far as I can see it has long been the rule in England that Courts will not usually grant the relief of specific performance of a contract for building or engineering works. On p. 493, paragraph 968, of Halsbury's Laws of England, Vol. 3, (Simonds Edn.) the law as prevailing in England has been stated in the following words:

'The courts will not grant specific performance of an ordinary building or engineering contract, although in the case of a building agreement where the consideration is the grant of a lease, the Court will order the grant to be made after (he building has been done. A contractor, however, may in certain circumstances obtain an injunction to prevent the employer from expelling him from the works pending arbitration under the contract. An exception to the rule against the granting of specific performance exists in cases where a person has agreed to carry out accommodation works in consideration for obtaining possession of land or as part of the purchase price of other land sold by him and the proposed works are sufficiently defined and the Court is of the opinion that damages will not provide an adequate remedy for the breach of contract.'

In Emden and Watson's Building Contracts and Practice, 5th Edition, at page 170 the law on the point has been stated in Ithe following words:

'Specific performance is an equitable remedy and it may be described as a mere enforcement of the contract in its substantiality where the common law remedy of damages would be totally inadequate and the performance of the Contract not

unjust to the defendant. It is a discretionary remedy and will not be granted where damages are sufficient recompense. The Count will, however, order specific performance of a Building Contract against the general rule where the buildings to be erected are sufficiently well defined and where damages would not be an adequate remedy.

Specific performance will not be granted if the party seeking it has by conduct disentitled himself to relief in equity, or where it would be harsh or unreasonable to grant, it.'

Again on page 171 it has been stated as follows:

'The Courts will not grant specific performance of an ordinary Building or Engineering contract, although in the case of a building agreement, where the consideration is the grant of a lease, such relief can be given.

The Court has jurisdiction to grant specific performance of a Contract to erect a building if (1) the work to be done is defined, (2) Plaintiff has a substantial interest in its execution which cannot be adequately compensated for by damages, and (3) Defendant has by the Contract obtained from Plaintiff possession of the land upon which the work is to be done.

The function of the Court is to give relief to both parties. Thus, generally, on the principle that the Court itself cannot exercise supervision, it will not grant specific performance in Contracts where personal services, trust or skill are essential components of the Contract. Thus, where a railway company agreed that a firm of Contractors should construct a railway and work it also, it was held that no decree of specific performance could be granted.

A Contractor may, however, in certain circumstances obtain an injunction to prevent theEmployer from expelling him from the works pending arbitration under me Contract.'

35. The Court of Appeal in England in Wolverhampton Corporation v. Emmons, (1901) 1 QB 515 held that as a general rule the Court will not enforce specific performance of a building contract but there can be exception to that rule. The law

on the point has been summarised by Romer L. J., in the following words in the above mentioned case:

'There is no doubt Ithat as a general rule the Court will not enforce specific performance of a building contract, but an exception from the rule has been recognised. It has, I think, for some time been held that, in order to bring himself within exception, a plaintiff must establish three things. The first is itihat the building work, of which he seeks to enforce Ithe performance, is defined by the contract; that is to say, that the particulars of the work are so far definitely ascertained ithat the Court can sufficiently see what is the exact nature of the work of which it is asked to order the performance. The second is that the plaintiff had a substantial interest in having the contract performed, which is of such a nature that he cannot adequately be compensated for breach of the contract by damages. The third is that the defendant has by the contract obtained possession of land on which the work is contracted to be done. The rule on this subject is stated by Fry, L. J. in his work on Specific Performance, 3rd Edn. pp, 44, 45, in substantially the same terms as those in which I have just stated it.'

36. In my opinion the law in England is not different from that in our country and the provisions of Sections 12 and 21 of the Specific Relief Act have been framed in accordance with the English: decisions. It is therefore not quite correct to say that in England a writ of mandamus is refused in a contractual matter because relief can be obtained for the specific performance of the contract in a Court of equity. In my opinion, therefore, this argument of Mr. Kunzru is also not tenable.

37. In this connection Mr. Kunzru has invited! my attention to some English cases. He has placed reliance upon the case of Westwood v. Secretary of State, (1863) 7 LT 736. That was not a case for the specific performance of a contract but was an action to recover the amount of certain extra works.

38. The next case on which reliance is placed is that of Roberts v. Bury Improvement Commissioners, (1870) 5 C. P. 310. That was an action to recover damages. Which the plaintiff of that case had sustained by reason of the defendants of that case having prevented him from completing a building contract which he had entered into with them. That was not a case for specific performance

of a contract but only for recovery of damages.

39. The next case on which reliance has been placed is that of Ludbrook v. Barrett, (1877) 36 LT 616. That case is an authority for the proposition that an action will lie by a builder against an architect, who fraudulently and in collusion with the builder's employer, refuses to certify that he is satisfied with the work done, whereby the builder is unable to get payment, if the architect has an interest in the contract between the builder and his employer. That case has no application to the facts of the present case.

40. The fourth case on which the learned counsel for the petitioner placed reliance is that of Marsden v. Sambell, (1880) 43 LT 120. That was an action founded on a proviso for re-entrv contained in a building contract and was not an action for specific performance of the contract.

41. The fifth case on which reliance was placed is that of Wells v. Army and Navy Co-operative Society, Limited, (1902) 86 LT 764. That was an action brought by a firm of builders to recover a balance admitted to be due under a building contract. It was also not a case of specific performance of the contract.

42. The last case on which reliance was placed is that of Miller v. London County Council. (1934) 151 LT 425. The plaintiff in that case sued the defendant the London County Council for the sum of . 880-3-2 alleged to be payable under a building contract dated 7-7-1931 and for interest on that sum. That again was not a case for specific performance of the contract.

43. I have carefully looked into all the cases cited by Mr. Kunzru. They are all cases on their own facts and in my opinion are not applicable to the facts of the present case. Those cases certainly do not support the contention of the learned counsel for the petitioner that a writ of mandamus is refused in England to enforce a duty under a contract because for such cases Courts there readily pass a decree for specific performance of the contract. I am of the opinion that the law in England as also in this country is that a statutory (contractual?) obligation cannot be enforced by means of a writ of mandamus.

44. In the end Mr. Kunzru has contended that even though it may not be possible to issue a writ of mandamus or any other prerogative writ in the circumstances of the present case Khere is nothing which prevents this Court from passing a suitable direction or order which would have the effect of doing justice between the panties. It is submitted that the powers given under Article 226 of the Constitution are not confined only to the issuing of prerogative writs but this Court has also the power to pass such orders in addition to the prerogative writs which it may in the circumstances of the particular case deem fid and proper to pass. It is true that under Article 226 of the Constitution a High Court cannot only issue prerogative writs but can also issue directions and orders. It is also true that the words 'direction or order' are not synonymous with a writ. A perusal of Article 226 also shows that the directions, orders or writs that may be issued need not be ejusdem generis with the prerogative writs (see Jeshingbhai v. Emperor : AIR1950 Bom363 ). In Mohammad Yasin v. Town Area Committee, Jalalabad : [1952]1SCR572 the Supreme Court passed the following order:

'The proper order would be to direct the respondent Committee not to prohibit the petitioner from carrying on the business of a wholesale dealer in vegetables and fruits within the limits of the Jalalabad Town Area Committee until proper and valid bye-laws are framed and thereafter except in accordance with a license to be obtained by the petitioner under the bye-laws to be so framed.'

A similar order was passed by that Court in the case of Sri Ram v. Notified Area Committee, Khatauli : AIR 1952 SC118 . In ithe case of Rashid Ahmed v. Municipal Board, Kairana : [1950]1SCR566 , the Supreme Court directed the Municipal Board of Kairana not to prohibit the petitioner from carrying on his trade as a wholesale dealer and commission agent of vegetables and fruits within the limits of the Municipal Board of Kairana except in accordance with the bye-laws as and when framed in future according to law, and further directed the Municipal Board to withdraw the pending prosecution of the petitioner.

In all these three cases orders or directions as distinct from prerogative writs were issued. It cannot be denied that orders or directions are quite distinct from prerogative write, and the High Court can shape its order in such a way as to

enforce justice in a particular case even though the form of the order may not correspond to that of a writ. Even (though that is so and the powers of this Court are very wide in shaping its orders, the circumstances under which these orders can be issued must be such under which prerogative writs are generally issued. In Veerappa Pillai v. Raman and Raman Ltd. : [1952]1SCR583 , the Supreme Court observed as follows:

'Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural Justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, ill seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made ..... Further, it will be noticed that the High Court here did not content itself with merely quashing the proceedings, it went further and directed the Regional Transport Authority, Tanjore,

'to grand Kb the petitioner permits in respect of the five buses in respect of which a joint application was made originally by the petitioner and Balasubramania Pillai and that in case the above buses have been condemned the petitioner shall be at liberty to provide substitutes within such times as may be prescribed by the authorities.'

Such a direction was clearly in excess of its powers and jurisdiction.'

45. A study of the various decisions of the Supreme Count leads me to the conclusion that though the powers under Article 226 are very wide and are not confined to the mere issue of prerogative writs and though the High Counts can pass suitable orders or directions, the said orders or directions must be passed for the same object for which usually the prerogative writs are issued, I have already held above that in the circumstances of the present case the proper remedy for the petitioner would be to file a regular suit. I have also held that in the circumstances

of the present case a writ of mandamus cannot be issued. It cannot also be denied that for the object which the petitioner has in view no writ can be issued. I am therefore of the opinion that an order or direction as contemplated by Article 226 of the Constitution of India can also not be issued in the present case.

46. Having considered the matter very carefully I am of the opinion that this petition mustfail. It is accordingly dismissed with costs. Theinterim stay order that was passed in the case isvacated.