

## A.S. Gill Vs State of Punjab and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 17, 2005

**Acts Referred:** Companies Act, 1956 " Section 192, 203, 283(1), 289, 302  
Constitution of India, 1950 " Article 12, 14, 152, 158, 171  
Punjab Communication Conduct, Discipline and Appeal Rules, 1997 " Rule 35

**Citation:** (2006) 133 CompCas 759 : (2006) 70 SCL 424

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** Rajiv Atma Ram, assisted by Kanwaljit Bajwa, for the Appellant; P.S. Patwalia, assisted by Vikas Sharma, for the Respondent

**Final Decision:** Dismissed

### Judgement

Tapen Sen, J.

In this writ petition, the petitioner prays for:

(a) quashing the order dated March 11, 2003 (annexure P10) issued by the respondent-company whereby and whereunder the petitioner was

informed that the board of directors of M/s. Punjab Communication Ltd., (hereinafter sometimes referred to for the sake of brevity as the "the

company" and sometimes, as "M/s. Puncom") had changed his terms of appointment vide resolution dated March 7, 2003, and had decided to

terminate his services on payment of 30 day"s remuneration in lieu of notice and therefore, a cheque bearing No. 748127 dated March 10, 2003,

drawn on the ICICI Bank for a sum of Rs. 3,44,323 as dues plus one month"s salary, was enclosed therein.

(b) Quashing agenda No. 121.03 (annexure P12) whereby and whereunder the board decided to alter the existing terms and conditions of

appointment of the petitioner.

(c) Quashing the minutes of meeting of the board of directors held on March 25, 2003, (annexure P13) in which the aforementioned decisions

were approved.

(d) Alternatively, the petitioner prays, that the respondents be directed to compensate him by paying 36 months" remuneration for the remaining

term in terms of Section 318(4) of the Companies Act, 1956.

2. According to the petitioner, M/s. Puncom is a public limited company having been established in the year, 1981, under the Companies Act,

1956. Since the Government of Punjab exercises deep and pervasive control over its affairs, it is an industry of the said Government and "an

authority" within the meaning of Article 12 of the Constitution of India.

3. The petitioner's further case is that while he was working as Deputy Director in the Department of Telecommunications, Government of India,

he was sent on deputation to M/s. Puncom on their own request. He joined as its Director Technical vide appointment letter dated July 20, 1988,

(annexure P1)

4. Subsequently on October 19, 1993, (annexure P2), he was made a regular Director Technical with effect from March 7, 1993. Clause 2 of the

appointment letter re-designated him as "Joint Managing Director (Radio)" with effect from April 16, 1993. The petitioner asserts that his date of

retirement would be April 30, 2005, i.e., the day on which he would attain the age of 58 years. On May 29, 1996, the board of directors of the

company held its 78th meeting to decide his terms and conditions of appointment and, by a resolution of the same day (vide annexure P3), the

petitioner was appointed as a full fledged managing director of the company for a period of 5 (five) years with effect from April 30, 1996. The

petitioner states that while joining on the post of managing director, he neither resigned from the regular post of joint managing director nor was he

asked to do so. The terms and conditions were thoroughly discussed in the said meeting in which the petitioner also participated. It was only after

the board of directors and the petitioner fully agreed on the terms and conditions, that they were reduced to writing and "minutes" were drawn up

in the shape of the said resolution dated May 29, 1996, (annexure P3). The petitioner also asserts that in terms of the provisions of Section 302 of

the Companies Act, 1956, the details of his appointment were duly sent to all the shareholders of the company. These details were also filed in the

office of the Registrar of Companies at Jalandhar. According to the petitioner, the normal termination clause of 3 (three) month's notice or pay in

lieu thereof, on either side, like any other terms and conditions of appointment, was discussed but the petitioner did not agree saying that it would

confer unbridled powers on the board of directors which would take away his independence to work in the interest of company. Upon his

disagreement, the said termination clause was therefore not included in the terms and conditions of appointment of managing director of the

company. On December 6, 2000, (annexure P4), the board of directors, in their meeting, decided to extend the term of office of the petitioner as

per Section 317 of the Companies Act, 1956, from April 30, 2001, i.e., the date on which his term as managing director was to expire, for a

further period of 5 (five) years with effect from May 1, 2001. The petitioner asserts that on a perusal of the aforementioned extension vide

annexure P4, the board approved 25 per cent, enhancement in his basic pay and rounded it off to the next increment with effect from May 1,

2001, along with enhancement of pay scale for a further period of 5 years without effecting any change in the other terms and conditions of his

employment. Once again, the board of directors did not include the termination clause for the extended term. Moreover, as required under the law,

all this information regarding the petitioner's extended term as managing director for an additional period of 5 years along with the fresh terms and

conditions were duly sent to the Registrar of Companies, Jalandhar, vide annexures A to A/3 appended to Civil Miscellaneous Applications Nos.

15114-15 of 2004 filed in this case and by order dated December 3, 2004, one of us directed that these miscellaneous applications will come up

along with the main case. Accordingly, they have been considered along with the main case.

5. Upon a perusal of these documents as contained in annexures A to A/3, it is evident that intimation regarding the extended period of 5 years

along with the fresh terms and conditions were duly sent to the Registrar of Companies. The petitioner claims that as against the net worth of Rs.

3.73 crores in the year 1988 when he had joined, the company's worth as on date is Rs. 181.77 crores. The company has now more than Rs.

100 crores in cash in its bank account and these are proof of the good work done by the petitioner.

6. It is not necessary to go into the details of the pleadings made by the petitioner in relation to what happened during the process of disinvestments

etc., save and except to record that as per the pleadings made, things did not apparently work out well in the disinvestment process and some

influential people with vested interests and with mala fide intentions, started trying to target the petitioner who was preventing grow irregularities in

the said disinvestment process. According to the petitioner, he "'presumably got in the way of the hidden agenda of certain powerful persons by

throwing open the entire correspondence in the Board of Directors meeting"' [extracted from para. 7(ii) infra].

7. The petitioner has further stated that during various meetings of the board of directors relating to finalization of the share purchase agreements

for the ongoing disinvestment of the company, the matter relating to compensation payable to the managing director for loss of office (in the event it

was decided to replace him by a new managing director) was discussed. According to the petitioner, since there was no termination clause, it was

decided to dispense with his services as managing director by giving 36 month"s remuneration u/s 318(4) of the Companies Act. The matter was

recorded in resolution No. 119.11 of the meeting of the board of directors held on February 10, 2003, and it was resolved that necessary

amendments in Clause 3.4 of the share purchase agreement be made so as to conform to the provisions of Section 318(4) of the Companies Act,

1956.

8. Meanwhile, legal opinion was taken by the Punjab Government from legal experts and their opinion was that the ""existing full time directors shall

be entitled to such compensation from the company as per the provisions of the Act read with the existing agreements in respect of such directors.

9. The petitioner has further stated that in order to meet the requirement of disinvestment procedure, a draft resignation incorporating a provision

that the petitioner was entitled to compensation of 36 months" salary was placed in the agenda of the 119th meeting of the board of directors held

on February 10, 2003, vide annexure P9. The petitioner was required to present this resignation at the closing meeting of the board of directors

which was to take place after finalization of the successful bidder and after two other stages had been followed. However, the petitioner states that

the first step was not completed and yet, in the bid opening meeting dated March 6, 2003, the petitioner was asked to submit an advance, undated

and unconditional letter of resignation. He partially complied by signing the draft resignation (annexure P9) on the spot leaving the date column

blank and handed it over to the bid opening committee. However, when the persons with ""mala fide intentions"" were unable to extract a blanket

resignation from the petitioner, two resolutions were drafted and moved by limited circulation as a result whereof, without any notice or information

to the petitioner, his terms and conditions of appointment were altered by inserting a new clause to the effect that his services can be terminated

without assigning any reason by giving 30 days" notice or 30 days" remuneration in lieu of notice. The petitioner came to learn that the ex-officio

Government director obtained the signatures of fellow ex-officio Government directors and rushed a senior subordinate officer to Delhi to secure

signatures of at least one more director to achieve majority and on March 7, 2003, itself, hurriedly completed the formalities of terminating the

services of the petitioner. On the basis of the resolution dated March 7, 2003, the petitioner was given the impugned termination letter dated

March 11, 2003 (vide annexure P10).

10. The petitioner has stated that three independent directors demanded an emergency meeting of the board of directors to know the reason for

this sudden action in terminating his appointment. These demands are collectively marked annexure P11. According to the petitioner, an emergency

meeting was deliberately fixed on March 25, 2003, because on that day, one of the independent directors, namely Mr. Arun Kumar, Chief

General Manager, J & K Telecom was to hold a Telephone Adalat in Srinagar. It was known to them that this date could not be changed as these

Adalats are advertised in the newspapers well in advance. Other directors, namely Mr. Prithpal Singh, managing director, BSNL, was also an

independent director and Shri D. S. Kalha, Secretary, Service and Technology, Government of Punjab, could also not attend the meeting on

March 25, 2003, because of their preoccupations. However, the two resolutions altering the terms and conditions of the petitioner's appointment

and then terminating his services by payment of 30 days' remuneration in lieu of notice, were nonetheless put up in the agenda of the meeting of

March 25, 2003, and then it was approved on the same day. The agenda items and the minutes of the meeting of the board of directors held on

March 25, 2003, are marked as annexures P12 and P13.

11. According to the petitioner, both from the agenda as also from the minutes of the meeting of March 25, 2003, it will appear that they are totally

silent and no reasons have been given for the two emergency resolutions. According to the petitioner, from a perusal of the minutes, it would be

evident that there are some cuttings on the crucial parts of the recorded minutes marked as annexure P13/A. This is suggestive of the fact that the

decision was taken without application of mind and on the directions of some powerful persons who had set their eyes on the post of managing

director and who had apparently used their connections in the Government with an ulterior motive to drain out as much as possible from the huge

amount lying with the company in its bank account in cash to the extent of Rs. 100 crores and which the petitioner was ""zealously guarding"".

12. The petitioner has further stated that being totally disillusioned and frustrated, three out of the four independent directors, namely Prithpal

Singh, V. P. Chandan and Arun Kumar resigned from the board of directors under protest vide letters of resignation which have been marked as

annexure P14.

13. The petitioner submits that the actions of the board of directors in changing the terms and conditions of the petitioner's appointment as vice

chairman and managing director without any notice and thereafter, terminating his services as per the said changed terms and conditions, are illegal,

arbitrary and against statutory provisions and have been resorted to with mala fide intentions. Consequently, the petitioner prays for quashing

annexures P10, P12 and P13 and in the alternative, prays that the respondents be directed to compensate him by paying remuneration for the

remaining tenure of his service and to allow him to join the post of joint managing director. He also prays for quashing Rule 35 of the PUNCOM

Conduct, Discipline and Appeal Rules, 1997.

14. In the written statement, the respondents have stated that the petitioner was working initially as the managing director and subsequently and

vice chairman and managing director of the company which is neither an "authority" nor a "State" within the meaning of Article 12 of the

Constitution of India. It is their further case that initially, M/s. Punjab State Industrial Electronics Development and Production Corporation Ltd.

(hereinafter referred to as PSEDPCL) owned 100 per cent, shares of PUNCOM but in the year 1994, the company came out with public issue

and ultimately, the holding of PSEDPCL was reduced to 70 per cent. The remaining 30 per cent, of its shares are with the general public.

Therefore, the company can neither be said to be a "government owned company" nor a "government controlled company". Therefore, the present

writ petition is liable to be dismissed as being not maintainable.

15. The respondents have further stated that even otherwise, respondent No. 2 company is not getting any financial aid or grants from the

Government. The company is not discharging any business activities on behalf of the Government. Furthermore, it does not enjoy any monopoly

status and that it is a totally commercial organization. The Punjab Government does not exercise a deep and pervasive control over the company.

The Rules and Regulations of the Punjab Government do not apply upon the company. The company is an autonomous body and a commercial

organization created under the Companies Act, 1956. Therefore, it is not a "State" within the meaning of Article 12 of the Constitution of India.

16. On merits, the respondents state, that no cause of action has accrued to the petitioner that can be said to give him the right to invoke the

extraordinary jurisdiction of this court by filing the present writ petition. They have further stated that the company is not a Government undertaking

and the Government of Punjab does not have a deep and pervasive control over its affairs. PSEDPCL does not hold the total share of respondent

No. 2 company.

17. They further say that the petitioner has admitted that he was appointed as managing director on April 30, 1996, but for reasons best known to

him, he has withheld the letter by which he was appointed as managing director on April 30, 1996, by PSEDPCL. In fact the petitioner has done so

in order to withhold relevant information to the effect that he was appointed on contract basis and that in the letter of appointment dated April 30,

1996, (annexure RI/2) there did exist a clause to the effect that his services could be terminated by giving him 3 (three) months" notice. By not

attaching the said letter, the petitioner has tried to project that in fact, his appointment was actually made by respondent No. 2 company keeping in

view the resolution dated May 29, 1996, which is totally incorrect and false. In fact vide resolution dated May 29, 1996, in pursuance to the

appointment of the petitioner by PSEDPCCL dated April 30, 1996, only the detailed remuneration was fixed because the letter dated April

30, 1996, appointing the petitioner had fixed salary as Rs. 30,000 plus usual perks. Only to clarify the usual perks which were to form part of the

remunerations, the resolution dated May 29, 1996, was passed. It is incorrect that on the basis of deliberations in the meeting of May 29, 1996,

the clause relating to termination of service by giving 3 (three) months" notice was either discussed or withdrawn by respondent No. 2 because the

petitioner did not accept the same. These statements are totally incorrect and false.

18. It is further stated that the major contributor towards increase in the worth of the company were the proceeds of the public issue of 1994,

including premium of Rs. 240 on Rs. 10 face value share by virtue of which the company received public funds to the tune of Rs. 106 crores and

this happened much before the petitioner took over as managing director of the company. The net worth of the company had already reached Rs.

170.65 crores as on March 31, 1996, but over the next seven years, i.e., up to March 31, 2003, the same had been reduced to Rs. 161.72

crores and even if Rs. 10.86 crores as expenditure incurred on VRS as part of disinvestments is added to the net worth of the company, the

increased value comes to Rs. 172.58 crores as on March 31, 2003, which is merely an increase of 1.13 per cent, over a span of 7 (seven) years.

This negligible increase would even fail to beat the ongoing inflation rate. Moreover the company continuously incurred losses from operations from

1996-97 onwards. The total loss incurred from operations for the period from 1996-1997 to 2002-2003 is Rs. 71.37 crores and it is this period

when the petitioner was heading M/s. PUNCOM. Moreover, the profits which the company showed during the aforesaid period were on account

of income from treasury operations and lease rentals for equipment sold on lease worth about Rs. 18 crores to the then Department of

Telecommunications in 1995. The petitioner had nothing to do with it.

19. In answer to the bald statement of the petitioner to the effect that the president of Videocon and the managing director of Shyam Telecom had

given appreciating comments for the work done by the petitioner, it is stated that there is no written communication by any of the abovementioned

companies giving these comments and in fact these words have been taken from a letter which was written by the petitioner himself, wherein it was

stated that the president of Videocon and managing director of Shyam Telecom had made these comments in favour of the company. It is further

stated that the petitioner is merely trying to take advantage of his own letter to project an impression that he had done commendable job and had

helped in the disinvestments of respondent No. 2 company. In fact the petitioner was all out against disinvestments and was creating all types of

hurdles.

20. On annexure P5, the petitioner has tried to convey an impression that he was asked to withhold certain information from the board of

directors. According to the respondents, this statement/attempt is totally incorrect and false because the letter, annexure P5, only states that the

business plan should not be circulated with the agenda as the same is a confidential document. Since confidential documents are actually given to

the board of directors at the time of the meeting, the petitioner was advised not to send these confidential documents as there was a risk that they

may be made public if someone were to get hold of the same while preparing the agenda. The respondents have stated that letter dated February

7, 2003, is being totally misinterpreted by the petitioner for his own advantage and that it is incorrect on his part to assert that the Government or

anybody else wanted to by-pass the board of directors in any manner. They also state that in order to delay the disinvestment project, the

petitioner was trying to apply all kinds of tactics so that his position as vice chairman and managing director in the company could be saved.

Therefore, all the acts of the petitioner were for his personal benefit and not at all for the benefit of the general public as asserted by him.

21. The respondents have also stated that the petitioner was misleading everybody including the board of directors in trying to project that there

was no termination clause in his appointment as managing director. In his pursuit to mislead, he tried to extract whatever he could in his favour by

misrepresenting facts although and as mentioned earlier, his appointment and the terms and conditions were clear on the issue that he was

appointed purely on contract basis for a period of five years with a clear indication that his services can be terminated by giving him 3 (three)

months notice.

22. Upon the applicability of Section 318(4) of the Companies Act, 1956, the respondents state that the same is not at all applicable to the



petitioner. By misrepresenting the fact, the petitioner was trying to bring his case u/s 318(4) of the Companies Act to get compensation if his

services were terminated on the disinvestment of the company. The legal opinion annexure P8 obtained by the petitioner does not give him any

benefit because the same clearly states that the provisions of the Act are to be read with the existing agreement in respect of directors and in case

of the petitioner, it was clear in his terms and conditions that his services could be terminated by giving him 3 (three) months notice which was later

on changed to 1 (one) month notice.

23. The respondents have further pleaded that the petitioner has attempted to make bald statements of ""mala fide intention"" without giving specific

details as to who was/were the person/s interested in seeking the resignation of the petitioner. They submit that such vague allegations cannot be

considered and that too, in the absence of actual persons said to be inimically disposed towards the petitioner. Allegations levelled without

specifying the name/s of the person/s is nothing but an attempt on the part of the petitioner to mislead this court.

24. According to the respondents, the allegation to the effect that resolutions were moved by limited circulation with the only intention of

terminating the services of the petitioner, is wholly misconceived and the fact is that the resolutions were sent to all the directors. They were

personally handed over to those who were available and sent by post to those who were not. In any event the majority of the members had

already approved the resolutions and all those members who attended on March 25, 2003, later ratified them in the meeting. The respondents

claim that they therefore had the authority to reduce the period of notice and therefore, the period of three months" notice was reduced to one

month or pay in lieu thereof. It is further submitted that the impression being attempted to be given out by the petitioner to the effect that the

resolution was managed to be approved by the three ex-officio Government directors, is totally misconceived and false because the directors

passed the resolution absolutely voluntarily and the same was duly ratified by all the directors on March 25, 2003. There was only one dissenting

note and this was also considered.

25. The respondents have explained that as per the normal practice, the date, March 25, 2003, was requisitioned by the company secretary on

March 14, 2003, for convening the meeting. If a particular director did not attend, his non-attendance could not be attributed to anybody.

Moreover, there was nothing irregular when all the directors (except for one dissenting note), approved the resolutions relating to the termination of

the services of the petitioner by giving him one month's salary in lieu of notice.

26. So far as ""cuttings"" in the minutes of the meeting of March 25, 2003, are concerned, it is stated that all allegations to the effect that these were

made/done with malice or with some ulterior motive, are totally false and slanderous. The chairman has the responsibility to enter the actual

developments in a meeting and in any event, these ""cuttings"" are totally irrelevant as the petitioner was fully aware that all the directors who

attended the meeting, approved (except for one dissenting note) the action of reducing the notice period from three to one month for purposes of

terminating his services and doing so by giving one month's pay in lieu of notice.

27. The allegation made by the petitioner to the effect that an attempt is being made to drain out Rs. 100 crores lying with the company, has been

vehemently denied by saying that the said allegation is totally incorrect, false and baseless and that too, without specifying the name of the person/s

who is/are interested to do this.

28. Upon the attempt made by the petitioner to impress upon this court that some of the directors resigned to protest against the manner in which

the petitioner was being dealt with, the respondents have stated that the independent directors tendered resignation in their own wisdom having

been guided by their own independent decision. However, their subjective and independent decision cannot affect or influence the decision taken

by the majority of the directors to change the conditions of service of the petitioner by altering the period of notice from three months to one

month.

29. Since the respondents are competent to alter the conditions of service of the petitioner, no opportunity of hearing was required to be given and

therefore, the respondents were justified and within their jurisdiction to change the terms and conditions of the petitioner.

30. On the issue that there has been violation of the provisions of the memorandum of association, it is stated that it is incorrect to state that Article

152 applies to the petitioner, The petitioner was a managing director and in case of his removal, Article 171 is the required Article under which the

petitioner can be removed. The petitioner is trying to misrepresent and mislead this court by citing wrong articles of association to project that his

termination was wrong. It is further stated that there was absolutely no requirement of giving 14 days' notice to its members/shareholders for a

meeting. The petitioner is governed by the terms and conditions to which he had agreed and which formed part of his letter of appointment as the

managing director and therefore, those terms and conditions can be brought into effect at any point of time. Therefore, even if the petitioner

attempts to take benefit out of Article 152 (which is not applicable), even then, the procedure for the removal of a director will not be applicable in

the present case because the petitioner, right from day one, was aware and knew that in his appointment letter appointing him as the managing

director, there did exist a clause that his services could be terminated by giving him three months' notice. That apart, even the board of directors of

PSEDPCCL, in their meeting held on April 29, 1996, had decided in clear terms that the appointment of the petitioner would be on contract basis,

terminable on three months' notice on either side. Consequently, it cannot be said that there was no termination clause by which the services of the

petitioner could be brought to an end by giving him three months' notice. It is also equally important to bear in mind that even while his services

were being extended, they were done so on the same terms and conditions. Consequently, the contention of the petitioner to the effect that he did

not know about the termination clause, cannot be believed.

31. It is further stated that having been aware of the termination clause all along, the petitioner cannot now turn around and challenge the same and

in any case, if he feels that there has been any violation of the contract (though, from the facts of the case there is none because the board of

directors had full powers and the competence to alter his terms and conditions of service), the remedy which is available to the petitioner is by

moving the civil court and not by invoking the jurisdiction of this court under articles 226 and 227 of the Constitution of India.

32. The board of directors having the power to terminate the services of the petitioner as per the terms and conditions of his appointment, no

reason was required to be given once the termination was as per the terms and conditions of the appointment letter. Therefore, once the terms and

conditions of appointment of the petitioner was altered the same was given effect to by giving him one month's pay in lieu of notice.

33. The high sounding claims of the petitioner that he was responsible for augmenting the finances of the company have been pooh-poohed by the

respondents by saying that in fact, the net worth of the company had plummeted down from the beginning of 1996-97 (i.e., the year in which the

petitioner was appointed as managing director) to 2002-03 (i.e., year when his services were terminated). It was prior to his appointment as

managing director of the company that during the year 1994 the worth of the company increased to Rs. 106 crores as a result of the inflow of the

public issue.

34. The respondents have sharply reacted to the unwarranted criticisms being made by the petitioner by saying that he has made frivolous

allegations of bias and malice without any justification and without naming the persons. Such bald statements without disclosing as to who is the so

called ""influential person"" who is influencing the decision of the board of directors cannot be taken into consideration. Additionally, nobody has

been impleaded as party by name in the writ petition and therefore the petitioner cannot raise the plea of bias, malice or interestedness in the

absence or behind the back of persons whom he has not impleaded. According to learned Counsel for the respondents, these scandalous

averments have been resorted to with the sole intention of prejudicing the mind of this court.

35. The respondents have denied the claim of the petitioner for salary by saying that he is not entitled for any salary much less the salary for 36

months as claimed. The petitioner's services have been terminated keeping in view the terms and conditions of his appointment which is perfectly

valid and legal.

36. Further, reply of the respondents is that the provisions of PUNCOM-Conduct, Discipline and Appeal Rules, 1997, are not applicable to the

petitioner as he has not been removed by way of punishment. He has been removed merely in pursuance of the terms and conditions of the

appointment letter. The averments to the effect that the order of termination is punitive have been denied by saying that no part of the order can

ever be said to project or suggest that the same is punitive.

37. In reply to the respondents, the petitioner has repeated that the company is a ""State""-owned being a public limited company and that the State of

Punjab has deep and pervasive control over it with 70 per cent, of its present shares being held through the Punjab State Industrial Electronics

Development and Production Corporation (i.e. PSEDPCL). So long as it retains 51 per cent, of shares a Government body reserves the right to

appoint/nominate majority of the directors and/or the top functionaries such as the chairman, vice chairman, managing director and whole time

director under articles 158 and 171 of the memorandum and articles of association (annexure P15). He has further stated that in order to keep

total control over the company, the Punjab Government has always ensured that a vast majority of the directors are Government directors. At the

time of filing of the present petition the company had six Government directors and one non-Government director. The six Government directors

were:

Shri K. R. Lakhanpal, IAS (Principal Secretary, Finance).

Shri S. C. Aggarwal, IAS (Principal Secretary, Industries and Commerce).

Sh. D. S. Kalhra, IAS (Principal Secretary, Science and Technology).

Sh. N. S. Kalsi, IAS (Director-cum-Secretary-Department of Information System and Administrative Reforms and PICTEL).

Sh. Vishwajeet Khanna, IAS (Managing Director, PSIDEC).

Mr. R. K. Nangia (Director Punjab State Electronic and Production Corporation/PICTEL).

38. It is further reiterated that the company is a Government of Punjab undertaking and that every letter-head and visiting card of its employees

describes the company as a "a Government undertaking". The petitioner relies on one such letter-head and visiting card which he has appended to

the replication and marked it as annexures P16 and P17.

39. The petitioner has further stated in his replication that he is challenging the violation of his fundamental rights i.e., the right to livelihood

enshrined under Article 21 of the Constitution by a State Government controlled body that too, without following the principles of natural justice.

Therefore, the writ petition is maintainable.

40. The petitioner has vehemently denied that he was appointed purely on contract basis. He submits that a perusal of the resolution dated May

29, 1996, passed by the board of directors in its 78th meeting appointing him as the managing director (annexure P3) and of the minutes of the

100th meeting by which the board of directors extended his term as managing director (annexure P4) would establish that no where the word

contract has been used. The board of directors of PUNCOM is the approving authority of the appointment of the petitioner even as per letter

(annexure R2/2) and hence, the terms and conditions approved by the said board of directors of PUNCOM are only relevant and effective.

41. The petitioner further states that he was a regular employee of the company working as its Director (Technical)/Joint Managing Director

(Radio) against a regular permanent post when he was chosen for the appointment as managing director. While joining as managing director, he

neither resigned nor he was asked to do so. It is therefore clear that the petitioner was not appointed as managing director on contract basis and if

the word "contract" is used to his prejudice, it would be misconceived and it would be a misnomer.

42. According to the petitioner, even annexures R-2/2 which is the letter/order dated April 30, 1996, (which the petitioner refers to as an

intermediary letter made in the process of finalizing the terms and conditions of his appointment), clearly mentions that the appointment is

subject to the approval of the board of directors and shareholders of the Punjab Communication Ltd. In fact, this letter was a formal letter to

authorize the petitioner to join formally as managing director and meet the statutory requirements. This is a common practice adopted by the

respondent-company because wherever exigency of work requires, candidates are requested to negotiations/finalization/approval of terms and

conditions, etc. For example : In the petitioner's own appointment as Director (Technical) in the respondent-company, although the appointment

letter (annexure P2) is dated October 19, 1993, the petitioner was working with effect from March 7, 1993, and the last para, of the appointment

letter covers the intervening period with back dated acceptance. In fact the contents of this ""intermediatory"" letter were never discussed with the

petitioner. Therefore, as per the appointment letter, when this ""intermediatory"" letter was put up before the board of directors, as agenda item No.

78.05 in its 78th meeting (annexure R2/3), the petitioner objected to the three months" notice clause saying that it was whimsical and arbitrary and

hence, after discussions, it was dropped from the terms of appointment of the petitioner as managing director. This fact is clear from the annexure

R2/3 (resolution) and the letter which was sent to all the shareholders contained all the terms and conditions of appointment except the clause

pertaining to three months" termination notice. A copy of the letter containing the terms of appointment of the petitioner which was sent to the

shareholders is annexed as annexure P18. The petitioner states that the same terms and conditions which were ""minuted"" by the board of directors

in the form of a resolution did not contain any termination clause and they were sent to the Registrar of Companies, Department of Company

Affairs, Government of India. It is further submitted that as per practice, for the post of managing director, a formal offer containing terms and

conditions is made to the selected candidate and he is given choice to accept/reject/negotiate the same. The petitioner states that this is

corroborated by the copy of the advertisement for the post of managing director, a copy of which has been marked as annexure P19 which is

clearly says that candidates were to apply on plain paper. No terms and conditions were specified which have been left to mutual negotiations by

specifying in the advertisement that ""Salary and perks will not be a constraint for the right candidate"". Therefore, in the process adopted, the

negotiation was left to board of directors of the company of which the petitioner was already a member. This was also suitable to the petitioner as

he was an internal candidate on regular appointment. In the case of non-agreement of any of the terms and conditions, he could always have fallen

back on his regular appointment. Moreover, the person who signed the letter dated April 29, 1996, was a member of the board of directors and

he did not record any dissent in the meeting held on May 29, 1996, when the resolution relating to the petitioner's appointment containing various

terms and conditions (excluding any termination clause) was finally passed.

43. It is the further case of the petitioner that no document except annexure R2/2 which is an ""intermediary"" letter, mentions the termination

clause. The petitioner, while tendering his draft resignation, asked for 36 months" compensation which was not objected to by any one at any

stage. The petitioner further states that there was no need to take legal opinion (annexure P8) if there was any termination clause in the terms and

conditions of his appointment. Moreover, a detailed letter sent by Mr. V.P. Chandan, an independent director (annexure P11) to the chairman of the

board of directors on the petitioner"s termination which was discussed in the meeting of the board of directors, mentions in its first para, that there

is no termination clause in the appointment letter of the petitioner which was never objected to by any director of the company in the meeting.

Further, in the impugned agenda (annexure P12) and minutes of board of directors (annexure P13) vide which the petitioner"s services as

managing director have been terminated, there is no mention of the termination clause of three months" notice or pay in lieu thereof. In fact there is

no mention of three months" termination clause. Rather, both the agenda and the minutes added a fresh clause saying that the petitioner"s term of

appointment can be terminated. Further, there cannot be two simultaneous operative termination clauses qua the same appointment.

44. On the basis of the above, the petitioner asserts that there was no termination clause in the final terms and conditions of appointment of the

petitioner as managing director as approved by the board of directors and the respondents were also aware of this and in fact, it is they who are

trying to mislead this court by projecting an intermediary letter pertaining to finalization of the terms of appointment as the final document of

appointment of the petitioner as managing director.

45. The petitioner submits that the respondents" own appointment letter (annexure R2/2) says that this appointment is subject to the approval of

the board of directors and shareholders of the company and both these documents, i.e., annexures P13 and P18 (as explained above) do not

contain any termination clause while all other terms and conditions of appointment are mentioned therein. The petitioner vehemently denies that vide

resolution dated May 29, 1996, only remuneration was approved/fixed.

46. The petitioner contends that the letter dated April 30, 1996 (annexure R2/2) was not the final appointment letter but an intermediary letter

pertaining to finalization of the terms and conditions of his appointment which were finalized and approved by the board of directors and minuted in

the form of a resolution (annexure P3) which did not contain any termination clause. It was again these terms which formed the basis of his

extension as vice chairman and managing director of the company for another five years.

47. The petitioner further contends that the respondent-company made phenomenal progress after his association with it as director (technical). It

rose from a mere net worth of Rs. 3.73 crores in 1988, to Rs. 181.77 crores. This progress was due to the petitioner's technical inputs which

were duly appreciated from time to time. A copy of one such appreciation letter is annexure P16. In fact, even excellent response in public issue

came due to the company's excellent progress and technical strengths. Further, almost every State has a public section undertaking (PSU) like

PUNCOM (respondent-company) but during the period PUNCOM grew and preserved its earning almost all other telecom PSUs, like

PUNCOM, perished like GCEL of Gujarat, MELTRON of Maharashtra, KELTRON of Kerala, KTL of Karnataka, and UPTRON of UP, etc.

Against a meagre investment of Rs. 74 lakhs by Government of Punjab, the respondent-company has paid a dividend of about Rs. 33 crores and

still had more than about Rs. 100 crores in bank fixed deposits, etc., and was paying dividends when the service of the petitioner was terminated.

According to the petitioner, no other Indian telecom PSU has demonstrated performance close to PUNCOM.

48. He contends that if the board of directors was not satisfied with his performance, then why did they extend his term as managing director by

another five years ? Still further, the resignation of three independent directors was due to the petitioner's termination (annexure P14) and this

speaks volumes in favour of the petitioner's performance.

49. The petitioner vehemently denies that he was creating any hurdle and inconvenience in the disinvestments. In fact, his efforts were to get the

entire disinvestment process completed as per norms laid down by the board of directors after a detailed discussion on each aspect as is apparent

from annexures P5 to P7. In fact by pointing out errors, the petitioner prevented gross irregularities in the disinvestments and hence the allegation

that he was causing hindrance is totally incorrect and have been resorted to with ulterior motives of certain influential persons because the petitioner

had become an eyesore for some people which led to his termination by throwing to the winds all settled norms of law.

50. The petitioner reasserts that in his case, the discussions were held in the subsequent meeting only after he had pointed out that it was against

settled norms of the board of directors who could not alter his terms and conditions of service. The petitioner denies that he was doing anything for

his personal benefits because he was not going to lose anything because of the disinvestments and in any case, he would have got his compensation

for the remaining tenure as per Section 318(4) of the Companies Act in case of his ouster as managing director because he has the regular post of



Joint Managing Director (Radio)/Director (Technical) to fall back upon.

51. The petitioner submits that if there was any termination clause in the terms and conditions of his appointment, then there was no need of getting

a legal opinion and he could have been straightaway terminated as per terms and conditions. In any event, the legal opinion (annexure P8) says that

in case of loss of office, the incumbent is entitled to compensation as per the Companies Act.

52. The petitioner contends that there was no rationale behind the fact that no other director tendered his resignation and it was only the petitioner,

who was asked to tender his resignation and that too, when the disinvestment process was still in its early stages and the board of directors had

decided that resignation had to be a blanket resignation. The petitioner submits that he had tendered a draft resignation before the board of

directors. He further states that in fact, it was the ""game plan of the certain vested interests"" to get the petitioner out of their way.

53. The petitioner vehemently denies that the resolution altering the terms and conditions of his appointment and his subsequent termination was

ever circulated to all the directors as per requirement. He further submits, with reference to annexure PII, that two independent directors, viz. Mr.

Arun Kumar and Mr. V. P. Chandan did not receive the copy of the resolution although they were available in their respective places at the

relevant time. The meeting was scheduled at such a time when some of the directors could not come in spite of their best efforts. It is apparent

from the records (minutes of meeting of the board of directors-annexure P13) that out of the seven members of the board of directors, one was the

company secretary who cannot vote, four were Government directors and two were independent directors. So, out of five members who passed

the resolution, four were Government directors and one, i.e., Major Gen. Bains, who was an independent director, raised his voice against the

resolutions although he signed it but later on, asked for an emergency meeting. The petitioner states that the period of termination notice was not

reduced and in fact, a new clause, i.e., the termination clause was added in the terms and conditions of his appointment without informing him. This

was illegal and it could not have been done without any information to him.

54. The petitioner reiterates that the entire action of terminating his services was at the behest of the State of Punjab on behalf of certain vested

interests who have close links in the Punjab Government and this would be further clear from the ""cuttings"" appearing in the minutes (annexure

P13A). Due to these mala fide intentions, the resolutions were not sent to all the independent directors and got signed by some members of board

of directors with "lightening speed". A meeting of the board of directors was called on such a date when some of the directors were already

occupied and this was in the knowledge of everybody. Then in the meeting also, only Government directors approved the impugned resolutions

except one independent director, who expressed his discomfort at his decision which is apparent from the minutes of the meeting (annexure P13)

and also asked for an emergency meeting to discuss this issue. It is submitted that three independent directors resigned under protest. Further, Mr.

Prithipal C. M. D., BSNL gave a milder reason for leaving the meeting of the board of directors as being pre-occupied but he nevertheless,

condemned the termination of the petitioner's services as managing director in strongest possible terms (refer annexure P14).

55. The petitioner asserts that no employee is competent to change the terms and conditions of appointment of any employee to his/her

disadvantage without hearing and informing him. If that was so, then there was no need to give VRS to 400 employees of PUNCOM by giving

about 36 months' remuneration amounting to Rs. 10.86 crores. Their terms and conditions of appointment could also have been changed like that

of the petitioner and they could also have been thrown out like the petitioner without any information and hearing.

56. The petitioner reiterates that Article 152 is applicable upon the petitioner. Under Article 171, PSEPDC has the power to appoint and discuss

full time directors, M. D., V. C. and chairman from amongst the directors. But there is no separate provision for the procedure to be adopted to

remove the managing director, vice chairman or chairman. Hence Article 152 (laying down the procedure to be followed for removing the director)

is to be followed as managing director is appointed from amongst the directors of the board of directors and is also one of the directors. Therefore,

as per Article 152, 14 days' advance notice for the meeting is required to be given to all the directors including the petitioner for removal of even

the petitioner. But in the present case, the petitioner was directly handed over the termination order without even intimating the resolutions passed

against him by which it had been decided that he could be removed by the addition of a new clause. The petitioner also states that two independent

directors, viz., Mr. Arun Kumar and Mr. V. P. Chandan were not even intimated about the impugned resolution although they were available at

their respective places and nothing has been placed on record to prove that they were communicated about the resolutions.

57. The petitioner states that he was not a party to the proceedings of the meeting held on April 29, 1996 (annexure R2/1). He further states that

even assuming that his appointment was on contract basis (which he does not admit), this was all the more reason why he should have been

informed about the change being made in his contract of service so as to enable him to consider either to accept or not to accept. He further states

that the board of directors did not have the jurisdiction to change the terms and conditions of his appointment to his advantage. No such clause of

the articles of association or any relevant statute has been pointed out. In fact all such averments have been made in the air without corroborating

them with any rules/evidence.

58. The petitioner has submitted that it is incorrect to allege that the net worth of the company came down during his tenure because if it were so,

his term of office would not have been extended. There is apparent malice and bias in the impugned action of the respondents. Mere non-

impleadment of any party by name does not make the allegations of bias and malice invalid. The action of the respondents was high-handedness

and resorted to with ulterior motives.

59. The petitioner further states that he is entitled to 36 months' remuneration as per Section 318(4) of the Companies Act and as per legal

opinion (annexure P8).

60. The petitioner denies that his appointment as managing director was on contract basis and therefore for an illegal act of terminating his

employment, a writ petition is maintainable.

61. M/s. P. S. Patwalia, learned senior advocate appearing for the respondents, has submitted at the very outset, that the Punjab Communications

Limited (respondent No. 2) is not a "State" within the meaning of Article 12 of the Constitution of India. He has further submitted that initially M/s.

Punjab State Industrial Electronics Development and Production Corporation Ltd. (PSEDPCCL) owned 100 per cent, shares of M/s. PUNCOM

but thereafter in the year 1994 this company (PUNCOM) came out with public issues as a result of which ultimately the share holding of

PSEDPCCL was reduced and as on date it holds only 70 per cent, while the remaining 30 per cent, is held by the general public. Mr. Patwalia

submits that in this view of the matter, respondent No. 2 company cannot be said to be a Government company at all. He relies upon the judgment

of the honorable Supreme Court of India in the case of Zee Telefilms Ltd. v. Union of India JT [2005] 28.

62. This court rejects the aforementioned contention to the effect that the company is not a "State" for the following reasons. From the written

statement filed by respondents Nos. 2 and 3, it has been admitted that at least, the holding of PUNCOM is M/s. PSEDPCCL which is the Punjab

State Electronics Development and Production Corporation Limited and which holds 70 per cent, of the shares of PUNCOM. Now under the

definition of Section 617 of the Companies Act, 1956, a Government company means "any company in which not less than fifty-one per cent of

the (paid-up share capital) is held by the Central Government, or by any State Government or Governments, or partly by the Central Government

and partly by one or more State Governments, (and includes a company which is a subsidiary of a Government company as thus defined).

63. Admittedly, PSEDPCIL which is a State Government Corporation owns 70 per cent, of the shares of PUNCOM. This apart, annexure P1 is a

letter dated July 20, 1988, addressed to the petitioner sent by M/s. PUNCOM and this letter of 1988, is a letter head describing Punjab

Communications Ltd. as "a Government undertaking". Similarly, the other letter head dated October 19, 1993, is annexure P2 and this also is the

letter head of M/s. PUNCOM describing the said company as "a Government undertaking". In this context, it is necessary to mention that in

paragraph 2 of the writ petition the petitioner, has specifically stated that PUNCOM is an industry of the Government of Punjab and every letter

pad of the company recites that it is a Government undertaking. The contents of paragraph 2 of the writ petition have been answered in paragraph

2 of the written statement but this specific assertion has not been answered. Additionally, it is evident from reading annexure R-2/1 that it is the

minutes of the 95th meeting of the board of directors of PSEDPCIL held on April 29, 1996, in which decision was taken to appoint the petitioner

on the post of managing director on a contract basis for a period of five years. Moreover, item 95.06 which approves the appointment shows that

the petitioner was interviewed by a committee consisting of various persons including the Secretary, Department of Industries and Commerce,

Government of Punjab and the member, Telecom Communications, Government of India. It would be relevant to mention here at this stage that

under the provisions of Section 192 of the Companies Act, 1956, a copy of every resolution taken in a meeting is required to be filed, within 30

days, before the Registrar for registration. The decisions taken in the resolutions appointing the petitioner and thereafter extending his term by

another five years was duly registered under the provisions of Section 192. Proof in support thereof has been filed in this case vide C. M. Nos.

15114 and 15115 of 2004. These documents include the prescribed forms and details required for registration in terms of the provisions of the

Companies Act and they include the registration of details relating to terms and conditions of appointment of the petitioner and the subsequent

changes. From a perusal of these documents, it is evident that necessary information was given in the prescribed manner and were accordingly

registered through Form 25C relating to the decision taken on May 29, 1996, concerning the appointment of the petitioner as managing director

for a period of five years with effect from April 30, 1996. Form 23 is the registration of the subsequent decision taken renewing the contract for a

fresh period of five years. In this document, i.e., Form 23, it has been mentioned that the name of the company is M/s. Punjab Communications

Ltd. and under column No. 3, this company has been described to be a Government company. Finally annexure PI 9, which has been brought on

record by the petitioner in his replication to the written statement is the advertisement dated February 20, 1996, published in the Economics Times,

New Delhi under the banner of PSEDPCCL calling for applications for the post of managing director. In this advertisement, it is stated that M/s.

PSEDPCCL ""requires managing director for its subsidiary company, Punjab Communications Ltd."".

64. For these reasons, this court is of the view that the argument of Mr. P. S. Patwalia to the effect that PUNCOM is not a Government company

or that it is not a State, cannot be accepted. In this context, it is also necessary to take into consideration a judgment of this court passed in the

case of Lt. Col. Guriqbal Singh v. Punjab Communications Ltd. [1994] 2 RSJ 313 wherein it has been held in paragraph 9 infra that the company

was receiving full assistance from the State and that the State had full control over it and therefore, the Corporation was a State within the meaning

of Article 12 of the Constitution of India and consequently, a writ petition was maintainable. In view of the aforementioned reasoning, it does lie in

the mouth of the respondents to say that the respondent-company is either not a Government company or is not a State within the meaning of

Article 12. These arguments are consequently repelled and it is held that M/s. PUNCOM is Government company and the State has deep and

pervasive control over its affairs and therefore, it is amenable to writ jurisdiction.

65. Mr. Rajiv Atma Ram, learned senior advocate, appearing for the petitioner submits that by reason of annexure P3, it will be evident that the

appointment of the petitioner as managing director of PUNCOM was pursuant to the provisions of the Companies Act and that his appointment

and extension were duly registered under the provisions of Section 192 of the said Act. Learned counsel then contends that the impugned order

dated March 11, 2003, as contained in annexure P10 informing the petitioner that the board of directors had taken a decision to alter his terms and

conditions of appointment and to terminate his services on payment of 30 days' remuneration in lieu of notice together with one month's salary, is

illegal and without jurisdiction because in the order appointing him as a managing director of the company vide annexure P3 there was no condition

that his services could be terminated or that he could be removed by giving three months" notice. He further submits that in any event, his services

could not have been dispensed with in the manner in which it was done because contrary to the provisions of Section 289 of the Companies Act,

1956, circulation of the impugned resolution being agenda No. 121.03 (annexure P12) was not made to all the directors. He further submits that

independent directors dissented and some of them resigned. He submits that these directors were of the view that since there was no termination

clause in the letter of appointment, the services of the managing director could be dispensed with only by giving him 36 months" remuneration.

They also stated that the manner in which the petitioner was removed was not proper. These views of the directors are to be found between pages

89 to 93 and 110 to 115.

66. Learned counsel further submits that in fact, it is really at the behest of the State of Punjab that his services were terminated and this would be

evident from the fact that vide resolution No. (c) of the Agenda No. 121.03 of the meeting of the board of directors, (annexure P12) it was

decided that the Government of Punjab had appointed one Shri Vishwajeet Khanna, IAS as vice chairman-cum-managing director of the company

vide letter dated March 11, 2003.

67. Learned counsel further submits that once it is held that the company is an authority and a ""State"" within the meaning of Article 12, the manner

in which the services were terminated must be held to be totally in violation of Article 14 of the Constitution of India. He further submits that the

action of the respondents in terminating his services amounts to following a policy of ""hire and fire"" which is totally illegal and unconstitutional.

68. After having carefully gone through the facts of this case and having considered the rival submissions made by the parties before this court, it

must be held that ultimately this writ petition cannot succeed and it has to be dismissed. No doubt, the writ petition is maintainable and to that

extent Mr. Patwalia"s arguments are rejected but at the same time, the elaborate arguments and points of law propounded by Mr. Rajiv Atma

Ram cannot be entertained for the simple reason that the appointment itself was absolutely contractual in nature and the termination was also

strictly as per the contract and therefore, this court would not issue a writ to enforce a contract of personal service. From a perusal of the written

statement, it is evident that the respondents have very ably demonstrated this point. With reference to annexures R2/1 and R2/2, it is established

that the petitioner was actually appointed on April 30, 1996, as managing director. This appointment was purely on contract basis for a fixed

period of 5 years and therefore, his services could certainly be terminated by giving three months" notice on either side. The appointment of the

petitioner being contractual, the same therefore cannot be enforced through a writ petition before this court. The present writ petition is in fact, in

the nature of enforcement of a contract which is therefore not maintainable and consequently, liable to be dismissed.

69. This court is therefore not able to understand as to what prompted the petitioner not to disclose the aforesaid two documents (annexures R2/1

and R2/2) at the time of filing the writ petition. These documents are so very crucial that they certainly demolish all arguments of the petitioner that

his services could not have been terminated in the manner that it has been so done. This court has therefore no option but to draw an adverse

inference against the petitioner to the effect that he deliberately withheld these two documents from the notice of this court so as to prevent it from

coming to the conclusion that the appointment of the petitioner was (a) contractual and (b) that it did contain a termination clause contrary to what

the petitioner has been pains takingly attempting to argue ad nauseam. This court is therefore inclined to accept the statement of the respondents in

their written statement to the effect that the petitioner has attempted to mislead this court at various stages. He has intentionally withheld the order

of appointment dated April 30, 1996, by which he was appointed as managing director of PUNCOM and it was pursuant to that appointment that

he had already joined on the same date, i.e., on April 30, 1996. In fact, his appointment was as a result of the resolution passed by PSEDPCL in

their meeting held on April 29, 1996. The board of directors considered the appointment of managing director and decided to appoint the

petitioner as such on contract basis for a period of 5 years. It was clearly mentioned in the resolution itself that the said contract was terminable on

3 months" notice on either side. That resolution dated April 29, 1996, which is annexure R2/1 and the consequential order dated April 30, 1996,

which is annexure R2/2 read thus:

Annexure R2/1 : After due consideration, the board approved the appointment of Sh. A. S. Gill to the post of managing director for a period of

five years on contract basis, terminable on three months" notice on either side on a monthly salary of Rs. 30,000 in the scale of Rs. 30,000-2500-

Rs. 50,000 plus usual perks as admissible to the chief executive of Punjab Wireless System Ltd. The board authorized the managing director to

issue letter of appointment to Shri Gill.

Annexure R2/2 : In terms of the provisions of Article 171 of the articles of association, we are pleased to appoint you as managing director of

Punjab Communications Ltd., our subsidiary company. The appointment shall be for a period of 5 years on contract basis, terminable on 3

months" notice on either side, on a monthly salary of Rs. 30,000 in the scale of Rs. 30,000-2500-50,000 plus usual perks as admissible to the

chief executive of Punjab Wireless Systems Ltd.

70. Thus, it is clear that both the resolutions as well as the letter of appointment did contain terms to the effect that the contract could be terminated

by 3 (three) months" notice. It is, therefore, manifestly clear that the petitioner deliberately and conveniently withheld these crucial documents so

that he could argue before this court that the terms and conditions of his appointment did not contain any termination or notice clause. Had it not

been for the respondents, this court would not even have known about the existence of these two documents and in the absence of such vitally

important facts, this court would perhaps have been led to believe that:

(a) that the appointment was not on contract basis:

(b) that the appointment was not for a specified period of time; and

(c) that the appointment could not be terminated by giving 3 (three) months" notice.

71. If, on the basis of non-production and non-disclosure of these two documents, the court would have concluded as indicated above, it would

have been totally contrary to the facts and the judgment of the court would have been rendered judicious. It is thus evident that in fact, the

petitioner was appointed as managing director on April 30, 1996, for a period of 5 years on contract basis with a clear understanding that the

employment could be terminated by giving three months" notice on either side and this fact has been suppressed/concealed by the petitioner.

72. Consequently, this court refuses to believe the story built up by the petitioner in paragraph 4 of the writ petition to the effect that the 3 (three)

months" notice clause for termination of his services was discussed by the board of directors on May 29, 1996 but the same was not included in

the terms and conditions of his appointment because of his disagreement. This is nothing but an attempt to "spin a yarn" as there is nothing on

record to establish these tall claims of the petitioner and this court therefore has no hesitation in holding that in fact, no such deliberation took place

because the appointment of the petitioner had already been made by PSEDPCCL one month earlier on April 30, 1996. The minutes of the meeting

attached by the petitioner as annexure P3 was only to clarify his remuneration and this would be evident from the agenda of the meeting held on

May 29, 1996, which clearly stated that the petitioner had already been appointed by the PSEDPCCL on April 30, 1996 (one month earlier) and

therefore his remuneration was accordingly fixed.



73. It is further evident that vide agenda No. 78.05, which again has been brought on record by the respondents in their written statement vide

annexure R2/3, the respondents, in order to give a formal shape to the appointment dated April 30, 1996, resolved that the BOD should give ex

post facto approval of the appointment at the remuneration fixed by the holding company. It is thus clear that there was no deviation from the terms

already fixed by the appointment letter dated April 30, 1996, which contained a clause that the services of the petitioner could be terminated by

giving 3 (three) months" notice and that the appointment was purely contractual. These same terms and conditions were also repeated while

extending his appointment with effect from May 1, 2001, and therefore, it is evident that the petitioner has misled this court by withholding material

information and relevant documents which were so very crucial for this case.

74. In the aforesaid background, if one notices the contents of the impugned order dated March 11, 2003 (annexure P10), it would be seen that it

is in terms of a pure and simple contract which was decided not to be extended. It is not punitive in nature and all that it says is that the board of

directors of Punjab Communications Ltd., had decided, after changing the terms of his appointment, to terminate his term of office as vice-

chairman and managing director of PUNCOM after paying 30 days" remuneration in lieu of notice and therefore a cheque towards dues plus one

month"s pay amounting to Rs. 3,44,323 was enclosed therewith. Such an order is a mere termination of contract without any stigmas attached and

without the same being indicative of being punitive in nature. Such an order, if allowed to be processed through a writ petition, would amount to

processing a contract of personal service, which is beyond the scope of judicial review under Article 226/227 of the Constitution of India.

75. Moreover, it is also evident that these contractual terms and conditions of appointment were readily accepted by the petitioner at the time

when the assignment was being offered to him or were being extended for another period of 5 years. However, what is extremely important is that

while extending his term for a fresh period of 5 years with effect from May 1, 2001, the board of directors, in their hundreth meeting vide agenda

No. 102.04 as contained in annexure P4, resolved, inter alia, to so extend the period for another 5 years ""without any change"" in the other terms

and conditions of his employment~&~in other words, the initial terms and conditions emanating from the first resolution dated April 29, 1996, and

followed by the formal letter of appointment dated April 30, 1996, were left absolutely intact.

76. On his alternative prayer that the respondents be mandated to pay compensation to the petitioner by paying him 36 months" remuneration for

the remaining term in terms of Section 318(4) of the Companies Act, 1956, this court has no hesitation in rejecting the same as being a totally

misconceived prayer resorted to with the intention of causing loss to the exchequer and gain to himself.

77. No doubt Section 318 of the Companies Act provides the payment of compensation to a managing director but the word used is ""may"" and

therefore, this cannot be construed to be mandatory especially more so in view of the remaining words contained therein and which includes the

interpretation of Sub-section (3) of Section 318 of the Companies Act. Sub-section (3) lays down that no payment of compensation shall be paid

to a managing director in the following cases:

(a) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or

bodies corporate, and is appointed as the managing director, manager or other officer of the reconstructed company or of the body corporate

resulting from the amalgamation;

(b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the office of the director is vacated by virtue of Section 203, or any of the Clauses (a) to (1) of Sub-section (1) of Section 283;

(d) where the company is being wound up, whether by order of the Tribunal or voluntarily, provided the winding up was due to negligence or

default of the director;

(e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of

the affairs of the company or any subsidiary or holding company thereof;

(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

78. In view of the statements made in para. 6 infra read with those contained in para. 7 infra of the written statement suggesting inter alia : (a) that

the total loss incurred from operations being Rs. 71.37 crores from 1996-97 to 2002-03 being the period when the petitioner was heading

PUNCOM; and (b) that in order to delay the disinvestments, the petitioner was trying to apply all kinds of tactics so that his position as vice

chairman and managing director in the company could be saved and therefore, all acts which were being done by the petitioner were for his

personal benefit and not at all for the benefit of the general public as asserted by him, this court is of the view that the respondents could perhaps

be held to justified if they took Section 318(3)(e) as a possible defence in refusing to pay compensation. However, this court hastens to add that

such an observation should not be construed to be conclusive because whether the petitioner was guilty of any of the misdemeanours indicated in

Section 318(3)(e), obviously involve giving findings on questions of fact after appreciating evidence and therefore, it would be sufficient to observe,

that for a claim for compensation under the provisions of Section 318 of the Companies Act, 1956, as alternatively prayed for by the petitioner, he

may move any other appropriate forum prescribed under the law but for such a remedy/grievance, he cannot invoke the writ jurisdiction of this

court because such a grievance is really in the nature of a declaration declaring that the petitioner is entitled to recover damages arising out of

breach of contract which cannot form subject matter of a writ proceeding. "

79. For the foregoing reasons, this court is not inclined to entertain this writ petition. This court is also not inclined to consider the other arguments

of learned Counsel for the petitioner relating to statutory violations of the Companies Act, 1956, for the plain reason that for such violations, the

Act itself has provided adequate forum where these can be agitated.

80. The other reason why this court is not inclined to interfere is because it has been held in the preceding paragraphs that the petitioner has misled

this court by withholding material information and relevant documents which were so very crucial for this case. This court would therefore have

taken a very serious view of the matter and would have imposed heavy costs on the petitioner but in the facts and circumstances, leaves the matter

at that. Consequently, this court holds that barring the argument that the company is a ""State"", all other submissions made on behalf of the petitioner

are rejected as being misconceived and devoid of merits. The writ petition is accordingly dismissed. No order as to costs.