

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1942 of 2016

IN

Civil Writ Jurisdiction Case No. 15316 of 2016

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M/s Aditya Multicom Private Limited, a Company incorporated under the Provisions of the Companies Act, 1956 having its registered office at 12, Waterloo Street, 2nd Floor, Kolkata - 700069, through its Authorized Signatory Kamlesh Gouaraw, Son of Shri Surendra Singh, Resident of D/139, Keshri Nagar, P.O. Rajeev Nagar, P.S. Rajeev Nagar, District Patna.

.... Appellant

Versus

1. The State of Bihar, through the Principal Secretary, Department of Mines & Geology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Mines & Geology, Government of Bihar, Patna.
3. The State Level Environment Impact Assessment Authority, Bihar, Patna through its Chairman.
4. The District Magistrate, Aurangabad.
5. The District Magistrate, Rohtas, Sasaram.
6. The Senior Deputy Collector-cum- Mineral Development officer, Aurangabad.
7. The Assistant Director, Mines & Geology, Rohtas, Sasaram.

.... Respondents

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Appearance :

For the Appellant : Mr. Y. V. Giri, Senior Advocate
Mr. Suraj Samdarshi, Advocate

For the Respondent-State: Mr. K.K.Jha, AAG-8

For the Respondent Mines Deptt.: Mr. D. K. Sinha, Senior Advocate
Mr. Rajendra Prasad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-10-2016

1. This Letters Patent Appeal has been preferred against the judgment and order, dated 14.09.2016, passed by a learned single Judge of this Court, in CWJC 15316 of 2016, directing the Principal Secretary, Department of Mines & Geology, Bihar, Patna, to consider and dispose of the representation, submitted by the appellant herein, in

accordance with law and with opportunity of hearing to the petitioner and to pass a speaking order.

CASE OF THE APPELLANT: -

2. The appellant Company is involved in the business of sand mining. The State Government, through its New Sand Policy of 2013, read with the Bihar Minor Mineral Concession Rules, 1972, laid down detailed guidelines with regard to sand mining and the procedure to be followed for the settlement of Sand *Ghats*. In terms of the said policy and Rules, 1972, the State Government, in order to settle the *ghats* of Rohtas and Aurangabad, had assessed Rs. 1,12,51,00,000/- (Rupees One Hundred Twelve Crores and Fifty One Lakhs Only) as the reserve price for the first year starting from January, 2015, and subsequent enhancement of 20% each year of the offered amount by the successful bidder till December, 2019.

3. Based on the above, the appellant Company participated in the auction process and became the successful bidder, having bid the highest amount of Rs.1,14,80,00,000/- (Rupees One Hundred and Fourteen Crores and Eighty Lakhs Only). The said amount was to be paid over three installments, the last of which was due on September 15, 2016. According to the terms of the bid, the appellant was allotted the mining rights for a period of five years, i.e., 60 months, based on a figure arrived at by calculating the production and revenue for

the past 3 years, i.e., 36 months.



4.The appellant states that right after the issuance of the tender/work order in the month of February, 2015, the State Government placed an embargo on sand mining activities, due to the order of the National Green Tribunal, dated 19.01.2016. Due to the said embargo, no mining activity could be carried out in the months of February and March, 2016. As a result of the same, the appellant-Company was unable to function for over two months. In the meantime, the appellant had already paid the first installment towards mining activities for these months, though, in fact, because of the order of National Green Tribunal, the appellant was not allowed to conduct mining for two months, which resulted in excess payment having been made to the State exchequer, for which, as the appellant claims, it is liable to be compensated.

5.The appellant further states that subsequently, mining activities were resumed after clearance was given by the State Level Environmental Impact Assessment Authority, however, with the condition that no sand mining shall take place in the months of July, August and September of every year, which is a condition, imposed at a stage subsequent to the contract between the appellant and the respondent. As a result of this subsequent change in the mining conditions, the bid period of 60 months has been, in effect, reduced to 45

months, because of deduction of 3 months of mining activities every year, though the bid amount has not been reduced proportionately.

6. The appellant, thus, approached this Court seeking the following relief(s):

(i) For a direction to the respondent authorities not to charge the instalment payable by the petitioner for September, 2016 against grant of work order for mining and transporting sand for the district of Rohtas and Aurangabad, as the petitioner has been restrained from mining and transporting sand for the months of July, August and September by the State Environment Impact Assessment Authority.

(ii) For a declaration that the respondent authorities being fully aware of the fact that petitioner has been restrained from mining sand for three months, the amount offered by the petitioner deserves proportionate reduction and till such exercise is completed the respondents cannot ask for payment of further instalment due in the month of September, 2016.

(iii) For a declaration that the settlement as per the N.I.T. and the work order issued was for five years and the consideration amount assessed by the department for the purpose of settlement and the offer made by the petitioner, pursuant thereto for 60 months cannot be curtailed by 25%, reducing it to 45 months, without proportionate reduction in the consideration amount, for such settlement.

(iv) For a direction to the respondent authorities to

proportionately reduce the consideration amount for settlement as the condition imposed by the State Level Enforcement Impact Assessment Authority, Bihar was subsequent to the estimate prepared for settlement in terms of Rule 48 of the Bihar Minor Mineral Concession Rules, 1972, as the same has reduced the period of settlement from 60 months to 45 months.

(v) For a declaration that the amount offered by the petitioner for the first year for Rs.1,14,80,00,000/- formed the basis for computation of the amount payable, for further four years which was to be enhanced by 20% every year and as such, reduction of period subsequent to such fixation deserves consideration by the State Government and in particular the instalment payable by 15th of September, 2016 as per clause 12 of the terms and conditions for settlement of sand Ghats as per the N.I.T.

(vi) For a direction to the respondent State to compensate the petitioner for the period when sand mining was stopped pursuant to the order of the National Green Tribunal, Eastern Zone Bench, Kolkata with effect from 9.2.2016, till its resumption, from 1st of April, 2016; and for any other relief or reliefs to which the petitioner is found entitled.

CASE OF THE RESPONDENTS: -

Rebutting the claim of the appellant, the respondent have submitted that it transpires from the monthly return submitted by the appellant, for the months of July, August and September, 2015, that the appellant had carried out the usual mining activities during this period. This apart, Clause 19(ii) of



the General Conditions of the tender document read with Rule 49 of the Bihar Minor Mineral Concession Rules, 1972, also permits the settlee, i.e., the appellant herein, to store sand at a distance of 300 feet up to a distance of one Kilometer from the bank of river, without the requirement of any separate stockiest licence for the purpose. The settlee can, therefore, according to the respondents, extract and store sand during working days and may, later on, sell the same during the period of prohibition of mining activities. In the other words, the respondent contends that under Clause 7(xiii) of the New Sand Policy, 2013, a settlee can compensate itself for the losses suffered, which it may suffer during the period of non-working days, by stocking the sand at a distance of 300 feet and sell the same during the period of prohibition, i.e., during the months of July, August and September every year. It is lastly submitted by the respondents that the claim of the appellant that it could not carry out the mining activities, during the months of July, August and September, and has thereby suffered loss is untenable in the facts and circumstances of the case and, therefore, the question of remission or compensation for the alleged loss is misconceived and need not be entertained by this Court.

7. Heard Mr. Y. V. Giri, learned Senior counsel, appearing for the appellant, and Mr. D. K. Sinha, learned Senior counsel, appearing for the respondent Minding

Department. We have heard also Mr. K. K. Jha, learned Additional Advocate General No. 8, appearing for the respondent-State.

8. The principal, issues arising in this appeal, may be summarized as follows;

i. What is the nature of contract between a State and a private party?

ii. Does the State, in changed circumstances, enjoy the liberty to unilaterally alter the terms of a contract affecting, materially and substantially, the rights of the private party?

9. What is the nature of a contract between a State and a private party.

10. In the case of ***Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors., reported in (1991) 1 SCC 212***, the Government of Uttar Pradesh terminated, with the help of a general order, appointments of all the government counsel, in all the districts of the State of Uttar Pradesh, with effect from 28.02.1990 and directed preparation of fresh panel to make appointments in place of existing incumbents irrespective of the fact whether the term of the incumbent had expired or was subsisting. Validity of this action of the State was challenged by way of a number of writ petitions. In the backdrop of these facts, a Two Judge Bench of the Supreme Court, speaking through J.S. Verma, J. (as His



Lordship then was), posed the question as to whether guarantee of non-arbitrariness, which is basic to the rule of law under Article 14, stands excluded from the State's action in contractual field. In answer to this momentous question, the Court made it clear, in ***Kumari Shrilekha Vidyarthi*** (supra), that the Constitution does not envisage or permit unfairness in State actions in any sphere of its activity. Leaving no room open for doubt, the Supreme Court held, in ***Kumari Shrilekha Vidyarthi*** (supra), that it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The Court, however, hastened to add that the scope and grounds on which judicial review would be permissible in contractual matters may be a different matter, but contractual matters cannot be wholly excluded from the purview of judicial review. Drawing the distinction between the contracts to which the State is a party, and the contracts to which the private parties are involved, the court, in ***Kumari Shrilekha Vidyarthi*** (supra), pointed out that while private parties are concerned with their personal interest, the State, while exercising its powers and discharging its functions, acts indubitably for public good and in public interest, for, the impact of every State action is also on the public interest and this factor alone is sufficient to import, at least, the minimal requirements of public law obligations even in the actions of the State in contractual matters. The Court also pointed out, in



Kumari Shrilekha Vidyarthi (supra), that though the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be limited, the fact remains that to the extent that a challenge is posed on the ground of violation of Article 14 by alleging that the impugned action is arbitrary, unfair or unreasonable, the mere fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, reiterated the Court, in ***Kumari Shrilekha Vidyarthi***, (supra), the obligation of a State is of a public character and that contractual obligation cannot divest the person aggrieved of the guarantee under Article 14 of non-arbitrariness at the hands of the State in all its actions.

11. Symbolizing the nature of character of the State, when it enters into contractual relationships, the Supreme Court made it clear, in ***Kumari Shrilekha Vidyarthi*** (supra), that the State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold, while entering into a contract, and, thereafter, casting off its garb of a State and adorn the new robe of a private body during the subsistence of the contract enabling it thereby to act arbitrarily subject only to the contractual obligations and the remedies flowing from it. The requirement



of Article 14 being the duty to act fairly, justly and reasonably, there is nothing, observed the Court, in ***Kumari Shrilekha Vidyarthi*** (supra), which militates against the concept of requiring the State always so to act, even in contractual matters. Drawing strength for the conclusion so reached from the decision in ***Dwarkadas Marfatia vs Port of Bombay***, reported in **(1989) 3 SCC 293**, the Court, in ***Kumari Shrilekha Vidyarthi***, (supra), further held that if the State is unable to produce materials to justify its action as fair and reasonable, burden on the person, alleging arbitrariness, must be held to have been discharged and the scope of judicial review, howsoever limited in contractual matters, must remain open to ensure that State action is not vitiated by the vice of arbitrariness.

12. In ***Kumari Shrilekha Vidyarthi*** (supra), the Court also took the view that even assuming that it is necessary to import the concept of presence of some public element in a State action, in the realm of contractual obligations, to attract Article 14, the fact remains that the ultimate impact of all actions of the State or a public body being on public interest, requisite public element is also present in contractual matters. Held, therefore, the Court, in ***Kumari Shrilekha Vidyarthi*** (supra), that it finds it difficult and unrealistic to exclude, from the purview of judicial review, the State actions in contractual matters after the contract has

been made, in order to test the validity of the actions of the State on the anvil of Article 14. The relevant observations, made at paras 21, 22, 23, 24, 28, 29, 30 and 33 in Kumari Shrilekha Vidyarthi are reproduced hereinbelow:

"21. The Preamble of the Constitution of India resolves to secure, to all its citizens, justice, social, economic and political and equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directive Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 non-arbitrariness which is basic to rule of law from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view

of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional

contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

23. Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

24. The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being

primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14."

Does the State, in changed circumstances, enjoy the liberty to unilaterally alter the terms of the contract affecting the rights of the private party materially and substantially?

13. According to the appellant, the order of prohibition of mining operations for the months of July, August and September has been issued in terms of the order passed by the State Environment Impact Assessment Authority. This apart, there has been a further prohibition in mining for the



period of 9.2.2016 to 1.4.2016, due to an order from National Green Tribunal. It may be pointed out that the appellant has not challenged the order(s) of the State Environment Impact Assessment Authority and the National Green Tribunal regarding prohibition from mining operations; rather, what has been challenged is that the corresponding obligations, on the part of the appellant, to pay the instalments, have not been proportionately reduced or waived. It is in this context that the appellant prays for a direction to the respondent authorities not to charge the installment payable by the appellant for December, 2016, against grant of work order for mining and transporting sand for the districts of Rohtas and Aurangabad, inasmuch as the appellant has been restrained from mining and transporting sand for the months of July, August and September by the State Environment Impact Assessment Authority and also for a direction to the respondent State to compensate the petitioner for the period, when sand mining was stopped pursuant to the order of the National Green Tribunal, Eastern Zone Bench, Kolkata, with effect from 9.2.2016, till its resumption from 1st of April, 2016.

14. Repelling the claim of the appellant, the respondent contends that the returns, submitted by the appellant, would show that contrary to the claims made in the writ petition, sand was, in fact, extracted even in the months of July, August and September. The appellant submitted a



rejoinder to the counter affidavit and submitted that from the returns, it is manifest that the appellant has not extracted sand from the Ghats for the district of Rohtas. Naturally, therefore, the returns, in respect of the district of Rohtas, are *nil* for the period of July, August and September. So far as the district of Aurangabad is concerned. the sand was already extracted and stored within 300 feet, which is permissible as per the N.I.T., from the bank of the river and, before every Challan it was brought to the notice of the respondent Department that the Challan was being utilized for transporting sand, which was stocked within 300 feet as permitted by the terms and conditions of the settlement.

15. It would be necessary to give a finding on this aspect as to whether the issue as to extraction of sand in the months of July, August and September is a disputed question of fact. It may be pointed out here that a writ is not rendered not maintainable for the mere reason that some questions of fact are required to be determined. If the question of fact can be resolved by proper appreciation of an admitted document or fact, adequate relief may still be given in a writ petition. In ***Gunwant Kaur v. Municipal Committee, Bhatinda***, reported in **(1969) 3 SCC 769**, it has been held by the Supreme Court that the High Court is not deprived of its jurisdiction to entertain a petition, under Article 226 of the Constitution of India, merely because in considering the

petitioner's right to relief, questions of fact may fall for determination. In a petition under Article 226 of the Constitution of India, the High Court has, thus, jurisdiction to try issues both of fact and law.

16. The respondents, by bringing on record the returns for the months of July, August and September, for the district of Aurangabad, contend that a perusal of the monthly returns, in question, show that, during the months of July, August and September, 2016, though no sale has been effected by trucks, but sale of *sand* by other modes have been made and returns have been accordingly submitted by the settlee to the said effect. Therefore, the contention of the appellant that it has suffered loss of business during the prohibition period, i.e., during the months of July, August and September, is not correct.

17. Thus, it would be seen from the contents of the admitted documents that so far as the district of Rohtas is concerned, there had been no extraction of *sand* in the months of July, August and September and so far as the district of Aurangabad is concerned, the excavations were made before commencement of the months of July, August and/or September. It is an admitted position borne out from a perusal of the tender documents (Annexure 2 of the appeal) that clause 19 (ii) of General Conditions permits the settlee to store sand at a distance of 300 feet from the bank of river for which,

no separate stockiest license is required. Even the settlee has the sole right to store sand extracted out of river bed, up to a distance of one Kilometre.

18. It is the contention of the appellant that returns for the district of Aurangabad pertain to the exercise of his rights under clause 19 (ii) of General Conditions permitting the appellant to store sand at the distance of 300 feet from the bank of river. It is apparent from the Challan, Annexure 14, duly endorsed by the respondents, that indeed sand was extracted and stored prior to the months of July, August and September and returns correspond to the extraction of sand in terms of clause 19 (ii) of General Conditions.

19. In view of the above, the contention of the respondents that the returns, submitted by the appellant, shows that the appellant extracted sand in the months of July, August and September is completely negated.

20. Coming, now, to the contention that the appellant itself had admitted in his mining plan that mining activity would be of 310 days instead of 365 days, we believe the reply of the appellant in its rejoinder is satisfactory in the sense that norms of labour laws cannot be circumvented by a contract between two parties. Hence, instead of 310 days, even if the appellant had agreed to carry out mining activities on all 365 days, it would have been contrary to labour laws.

Consequently, any such contract, contrary to statutory norms, can be construed to be opposed to public policy.

21. Now, so far as the entitlement of the appellant with respect to the claims made in the writ petition is concerned, a reference may be made to the case of ***Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.***, reported in **(1983) 3 SCC 379**, wherein the question before the Supreme Court was whether a writ of *mandamus* can be issued for enforcement of contractual obligations. The facts of this case was that respondents had applied before the appellant for financial assistance to set up a 5 star hotel. The terms and conditions were settled and the respondent wrote a letter accepting the terms and conditions on which the Corporation agreed to advance the loan. As a part of the deal, the Company had to create an equitable mortgage in favour of the Corporation for securing the loan. All the documentations had taken place for the purpose of loan and in order to materialize the project, the respondents invested huge sum of money for the project. Later on, due to complaints against the promoter of the company, the appellant refused to advance the loan on the ground that loan was dependent on refinance by the Industrial Development Bank of India and since the said Bank had refused to refinance, it would not be possible to advance the loan to the respondent.

22. Ultimately, the respondent moved a petition,



under Article 226 of the Constitution, in the High Court of Gujarat. A learned Single Judge issued a *mandamus* directing the appellant to disburse the promised loan to the Company, forthwith, in accordance with its letter of offer followed by the agreement. The appellant-Corporation preferred LPA No. 78 of 1981. The Division Bench, hearing the LPA, agreed with the conclusion reached by the learned Single Judge and dismissed the appeal.

23. In the above factual background, in ***Lotus Hotels*** (supra), one of the contentions, raised, in the Supreme Court, by the appellant, was that the dispute raised between the parties is in the realm of law of contract and, at best, the Corporation can be charged with breach of contract for which the remedy is by way of damages or any other remedy available to the respondent for breach of contract; but, in any case, a writ of *mandamus* cannot be issued compelling the Corporation to perform its part of the contract.

24. Repelling the arguments, the Supreme Court in ***Lotus Hotels*** (supra), held that it is too late in the day to contend that the instrumentality of the State, which would be "other authority" under Article 12 of the Constitution, can commit breach of a solemn undertaking on which the other side has acted and, then, contend that the party, suffering by the breach of contract, may sue for damages, but cannot

compel specific performance of the contract.

25. The Supreme Court further held, in **Lotus Hotels** (supra), that in the back drop of incontrovertible fact situation, the principle of promissory estoppel would also come into play and placed reliance, in this regard, on the case of **Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P.**, reported in **(1979) 2 SCC 409**, wherein following observations were made;

"8. The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

26. The concluding remarks, in **Lotus Hotels** (supra), are very important, wherein the Supreme Court held that if the appellant entered into a solemn contract in discharge and performance of its statutory duty and the



respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of *mandamus* directing it to perform its statutory duty. A petition, under Article 226 of the Constitution, would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12 and, therefore, the High Court was, therefore, fully justified in issuing a writ of *mandamus* to disburse the loan.

27. The relevant observations, appearing in **Lotus Hotels** (supra), are reproduced below;

"13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12."

28. In the present case, since the appellant has not challenged the prohibitory order restraining the mining



operations for the months of July, August and September, as passed by the State Environment Impact Assessment Authority, no writ of *mandamus* can be issued to the respondent to allow the mining operations for the prohibited months. It may also be pointed out here that it would not be permissible nor would it be advisable to extend the bid period from actual 45 months to the agreed period of 60 months inasmuch as such an exercise by the writ Court, by ignoring an expert opinion of State Environment Impact Assessment Authority, would not be proper. It is equally an admitted position that the respondents cannot be faulted for subsequent change of events since such events have been occasioned by the orders of a Statutory Authority. However, if the changed circumstances apply to the appellant, it would equally apply to the respondents as well; and it would, therefore, be highly prejudicial to appellant if it were to be saddled with the responsibility of paying the entire bid money even if it has been given lesser period of mining operations contrary to what had been agreed upon. Hence, such an act, on the part of the respondents, in not considering the representation of the appellant for proportionate reduction of the installments, is *ex facie* arbitrary, irrational, unreasonable and unjust. This aspect of the matter has not been taken into account by the learned single Judge, while passing the judgment and order, under appeal. What prevailed upon the learned single Judge was the

order, dated 09.09.2016, passed in CWJC 14619 of 2016, wherein, in a similar subject matter, a direction was given that the petitioner should approach the District Magistrate, Kaimur, who shall consider and dispose of the representation of the petitioner therein in accordance with law.

29. Resisting the appeal, Mr. D. K. Sinha, learned senior counsel for the respondents, contends that the judgment and order, under appeal, is an agreed order and, in support of this submission, heavily relied upon the following observations made by the learned single Judge, which read thus:

*"Learned counsel for the parties are in agreement that the issue raised in the present writ petition stands covered by the judgment and order passed in CWJC No.14619 of 2016 (**M/s Champion Group of Company Vs. The State of Bihar**). The said case was disposed of with a liberty to the petitioner to raise his grievance before the District Magistrate, Kamiur and who has been directed to consider and dispose of the same in accordance with law and with opportunity of hearing to the petitioner, by a speaking order."*

30. A bare reading of the observations, made above, shows that the judgment and order, under appeal, was not an agreed order inasmuch as what had been clarified by the learned counsel for the parties concerned, in the writ petition, was that the issues, raised in the present writ



petition, were also raised in CWJC No.14169 of 2016 and, in that particular case, the writ petition had been disposed of with liberty to the petitioner to raise his grievance before the District Magistrate, Kaimur. This did not mean, as has been correctly pointed out, on behalf of the appellant, that the appellant, too, prayed for similar directions in the present case. This apart, even though the learned counsel for the writ petitioner-appellant had pointed out, in the writ petition, as reflected from the judgment and order, under appeal, that a representation had been made by the writ petitioner to the Principal Secretary, Department of Mines and Geology, Government of Bihar, the fact remains that even this submission cannot be construed as a submission to indicate that the writ petitioner-appellant wanted the writ petition to be disposed of with direction to the Principal Secretary, Department of Mines and Geology, Government of Bihar, to consider the said representation of the writ petitioner-appellant.

31. Further-more, what one cannot ignore at all is the fact that as the Principal Secretary, Department of Mines and Geology, Government of Bihar, has, admittedly, taken a decision that notwithstanding the fact that the writ petitioner-appellant would not be allowed to operate or carry on, the mining activities during the months of July, August and September, every year, there would be no proportionate



reduction of consideration amount for the settlement. Once a decision has already been taken, the question of asking the Principal Secretary, Department of Mines and Geology, Government of Bihar, to consider the representation would be, as correctly submitted on behalf of the writ petitioner-appellant, meaningless and *otiose*.

32. It was, therefore, necessary, in the present case, for the learned single Judge to have considered the writ petition on merit and dispose of the same accordingly. Considering the fact that learned counsel for the parties have argued the appeal at length, we have decided to dispose of the appeal on merit in order to avoid protracted litigation.

33. In the case of ***Whirlpool Corpn. v. Registrar of Trade Marks***, reported in **(1998) 8 SCC 1**, the Supreme Court has observed that under Article 226 of the Constitution, the High Court, having regard to the facts of a case, has a discretion to entertain or not to entertain a writ petition, but the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. However, points out the Supreme Court, in ***Whirlpool Corpn.*** (supra), that the alternative remedy has been consistently held by the Court not to operate as a bar in, at least, three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental

rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. The relevant observations of the Supreme Court, appearing in **Whirlpool Corpn.** (supra), may be reproduced as follows;

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

34. Reading the *ratio*, laid down in the case of **Whirlpool Corpn.** (supra), along with the *ratio* laid down in the case of **Shrilekha Vidyarthi (Kumari)** (supra), there can be no manner of doubt that when the respondents communicated the prohibitory orders in the light of the orders passed by the State Level Environmental Impact Assessment Authority, it was incumbent upon the respondents to also proportionately reduce the instalment amount payable by the

appellant, but the respondents, having failed to do so, acted in a manner detrimental to the interests of the appellant so far as its contractual obligations are concerned. Viewed from this perspective, the act of the respondents was definitely found to be an arbitrary action, which cannot and does not stand the test of reasonableness under Article 14 of the Constitution.

35. The question, which, now, arises, is : *whether it would be proper for this Court to undertake an exercise as to what would be the proportionate deductions in the payment of instalments in view of the fact that three months have been deducted each year from the contractual period of 60 months and thereby reducing the contract period to a term of 45 months.* This apart, the appellant was also restrained from conducting mining operations for the period from 9.2.2016 to 1.4.2016 pursuant to the order of the National Green Tribunal, Eastern Zone Bench, Kolkata. We are of the considered view that such an exercise will have to be undertaken by the respondents in the light of the clear finding of this Court that such an exercise, in the facts and circumstances of this case, needs to be done to remove the traces of arbitrariness from the conduct of the respondents.

36. Because of what have been discussed and pointed out above, we allow this appeal and set aside the judgment and order passed by the learned single Judge. The respondents are hereby directed to proportionately reduce the

amount of instalments payable by the appellant for the period from 9.2.2016 to 1.4.2016 and for the months of July, August and September so far as the year 2016 is concerned. The respondents are further directed to proportionately reduce the amount of instalments payable by the appellant for the months of July, August and September for the year 2017, 2018 and 2019. The entire exercise, so directed, shall be completed within 1 (one) month from the date of order hereof.

37. In the result and for the reasons discussed above, this letters patent appeal is allowed in term of the above observations and directions. The appeal is disposed of accordingly.

38. However, there shall be no order as to cost.

(I. A. Ansari, CJ)

Dr. Ravi Ranjan, J : I agree.

(Dr. Ravi Ranjan, J)

Pawan/-

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