

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**+ Writ Petition Nos. 9895 of 2008, 2195 of 2009
and 6732 of 2009**

% Dated 25.11.2016

Between:

**# M/s. S.R.C. Company,
Engineers & Contractors, Secunderabad
Represented by its Partner Sri AVK Prasad and ors
... Petitioners**

and

**The Union of India,
South Central Railways,
Rep. by its Chief Engineer/C-V/SC
S.C.Railway, Secunderabad and anr.
....Respondents**

! Counsel for the petitioners: Sri C. Raghu

^ Counsel for respondent No.1 : Sri C.Balajee,

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? Cases cited:

- 1.(2015) 7 SCC 728**
- 2. 2006 (3) ALT 274.**
- 3. (2004) 3 SCC 553**
- 4. (2015) 7 SCC 728**
- 5.(2007) 9 SCC 593.**
- 6. (1998) 8 SCC 1**
- 7. (2011) 5 SCC 697**

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 9895 OF 2008, 2195 OF 2009
AND 6732 OF 2009

COMMON ORDER:

All these three Writ Petitions can conveniently be disposed of by this common judgment as they involve common grievance and questions of fact.

For the sake of convenience, the facts and contentions in Writ Petition. No.2195 of 2009 are referred to for adjudication of these Writ Petitions.

Brief facts of the case are that; The petitioner is a qualified and accredited contractor and has undertaken execution of works of the first respondent-Railways. The petitioner being a successful tenderer pursuant to tender notification dated 09.11.2006 was issued with a letter of acceptance on 12.01.2007 for execution of 'Purna-Akola Gauge conversion of track from JG to BG, Washim, Akola Section, Earth work and construction of minor bridges and miscellaneous works between km.762.00 to 750.00 between Barsitakli and Sivnishivpuri stations'. Thereafter an agreement was entered into on 12.06.2007. The petitioner has completed the works successfully. However, being aggrieved with non-payment of final bill whereby certain amounts are withheld, the present Writ Petition is filed. On enquiry, the petitioner came to know that final bill has been withheld on account of claim of the respondent with

respect to seigniorage fee payable to the Government of Maharashtra on the material used in carrying out the tender works.

It is the case of petitioner that in terms of Clause 41(1) of the agreement, though the petitioner is liable for payment of seigniorage fee, which is deductible from the bills in terms of Schedule-A attached to the contract agreement, only a sum of Rs.50/- per Cubic Meter is liable to be paid. It is the further case of petitioner as articulated by the learned Counsel for the petitioner, Sri C.Raghu that vide notification dated 15.12.2006, the State of Maharashtra has stipulated seigniorage charges at Rs.100/- per brass (one Brass = 100 Cubic feet) for the material such as earth, sand, coal etc., used in construction of the minor bridges, roads, rail tracks, buildings etc., however, the respondent consciously restricted the same to Rs.50/-per cubic feet in terms of agreement and Clause 41(1) of the agreement would authorize the first respondent to collect the seigniorage fee only when there is variation of the rates after execution of agreement and during the pendency of the agreement. Elaborating the same, learned Counsel would submit that inasmuch as, by the date of agreement, notification dated 15.12.2006 of the Government of Maharashtra having been in place and there being no variation, the respondent cannot take away the rights of the contractors contrary to the terms and conditions of the Agreement entered into and therefore collection

of seigniorage fee over and above 50/- per cubic feet is impermissible. To buttress his argument, learned Counsel placed reliance on the decision of the Apex Court in JOSHI TECHNOLOGIES INTERNATIONAL INC Vs. UNION OF INDIA {(2015) 7 SCC 728}.

A counter affidavit has been filed by the first respondent. The learned Counsel appearing for the first respondent submits that the Writ Petition itself is not maintainable in view of the relationship between the parties being contractual in nature and there being alternative remedy of arbitration clause in the agreement. He placed reliance on the decision of the Division Bench of this Court in M/s. MRKR-MBGEC, Rep. By C.MANO HAR REDDY Vs. CHIEF ADMINISTRATIVE OFFICER, CONSTRUCTION, SOUTH CENTRAL RAILWAY, SECUNDERABAD {2006 (3) ALT 274} wherein it was held that in view of the arbitration clause, Writ Petition is not maintainable and the parties have to necessarily settle any of the disputes between them only in terms of the agreement entered into. Learned Counsel for the first respondent further submits that the petitioner had not made the State of Maharashtra as necessary party to the Writ Petition inasmuch as the petitioner is questioning the payment of seigniorage charges demanded by the State of Maharashtra.

Heard the learned Counsel on either side elaborately. Perused the material available on record.

The first objection put forth by the learned Counsel appearing for the respondent with respect to non-joinder of necessary parties does not stand to scrutiny on account of the fact that by way of WPMP.Nos.20164 & 20165 of 2014, 20176 & 20177 of 2014, and 20162 & 20163 of 2014 respectively, the petitioners sought for amendment of cause title by adding necessary parties to the Writ Petition, which have been ordered by this Court and therefore on the proper party being made, the defect stands cured. Though the basis for issuance of the notification is the Minor Mineral Concession Rules is of Bombay Mining Digging Rules, 1955, as the petitioners are not claiming any relief against the State Government of Maharashtra, there is no requirement of Government of Maharashtra being made as party respondent. In that view of the matter, the submission of learned Counsel for the respondent in regard thereto also does not stand to reason.

Insofar as other contention regarding alternative remedy of arbitration is concerned, it may be noted that the Writ Petition came to be admitted in the year 2009 and the same is kept pending for all these years. Further as held by the Apex Court in the cases of ABL INTERNATIONAL LTD VS. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED {(2004)3 SCC 553}, JOSHI TECHNOLOGIES INTERNATIONAL INC Vs. UNION OF INDIA {(2015) 7 SCC 728} (supra), POPCORN ENTERTAINMENT vs. CITY INDUSTRIAL DEVELOPMENT

CORPORATION {(2007) 9 SCC 593}, WHIRLPOOL CORPORATION vs. REGISTRAR OF TRADE MARKS {(1998) 8 scc 1} and, UNION OF INDIA vs. TANTIA CONSTRUCTION PRIVATE LIMITED {(2011) 5 SCC 697}, it is not that there is absolute bar in entertaining the Writ petitions even in relation to cases involving contracts. It may also be noted that the controversy in the present Writ Petition is limited to the simple aspect as to whether the contractor is liable to pay seigniorage fee over and above 50% in excess of the amount stipulated in the Schedule A to the agreement. In view of the law laid down in the cases referred to hereinabove, it is not necessary for this Court at this point to relegate the parties to the Arbitration. To resolve the dispute, two necessary clauses in the agreement are required to be noticed, viz., Clause 41(1) and Schedule A of the Agreement;

" Clause 41.1. Seigniorage charges for supply of earth, moorum, sand and other minerals as fixed by the State Government and payable to them as revised from time to time during the currency of contract will be recovered by Railway from the contractors on account and final bills and remitted to the State Government. The rates quoted by the tenderer shall be inclusive of these charges. Claims regarding revision of Seigniorage charges and consequent enhancement of the accepted rate will not be entertained"

And the other is, Schedule A, the relevant portion of which is extracted below:

"

SCHEDULE 'A'
(Items which are not covered under SSR-2002 Vol.1 & II)

Sl. No.	Description of item	Qty	Unit	Rate	Amt
1.	xxxxx	xx	xx	xx	xx
2.	Note: i) xxxxxxx xxxxx xxxxx ii) Xxxxxxx xxxxx xxxxxx iii) xxxxxxx xxxxx xxxxxx iv) The rate shall include charges for obtaining earth seigniorage and taxes, Rate includes Royalty charges of Rs.50/- for 100 Cft will be deducted from running bills.				
3.	xxxxx	xx	xx	xx	xx

Sd/- Chief Engineer (Constn-V)
SC, Railway, Secbad."

A bare reading of Clause 41.1 leaves no manner of doubt that it is the substantive clause governing rights of the parties. In terms of the first part of the Clause 41.1, it is clear that seigniorage charges for supply of earth, sand and other minerals as fixed by the State Government will be recovered by the Railway from the contractors. So far as this aspect is concerned, there is no dispute. The second part of said clause makes it clear that contractors should bear incremental increase of seigniorage charges that arise during the contract period. Further, if there is any downward revision, it makes clear that no claim in relation to the same would be entertainable. So far as deduction of Rs.50/- per 100 Cft mentioned in the schedule is concerned, the same would be deducted from the running bills. Schedule A obligates

fixing of liability. One may also note that Schedule A relates to quantity of work and in relation thereto, rate of royalty would be deductible from the running bills as specified at Rs.50/- per Cft. A combined reading of Clause 41(1) and Schedule A would make it clear that while Clause 41(1) specifies that the contractor would bear liability on account of seigniorage fee etc., at the notified rates by the State of Maharashtra, the Schedule A specifies the rates at which the deductions to be made from the contractors' running bills. It is not uncommon that in a contract, *ad hoc* deductions are made from time to time subject to settlement of the amounts payable in final bills. The purpose of Schedule A is limited to the extent of amount deductible at specified rates towards seigniorage fee/royalty on *ad hoc* basis subject to the determination of final amount payable. In those circumstances, the argument of the learned Counsel for the petitioner that Clause 41(1) casts liability on the petitioner only when there is incremental increase in the rate of royalty/seigniorage fee during the currency of the contract though appears to be attractive, is liable to be rejected on proper interpretation of Clause 41(1) of the Agreement.

It may also be noted that in Writ Petition No. 9895 of 2008 and Writ Petition No. 6732 of 2009, there is even no schedule 'A' to the agreement. In those cases, even the agreement available to the petitioner in Writ Petition No.2195 of 2009 is also not available to the petitioners in the two Writ Petitions.

In view of the foregoing discussion, the Writ Petitions merit no consideration and are accordingly dismissed. No order as to costs.

Miscellaneous petitions pending consideration if any in the Writ Petitions shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 26TH November, 2016.

Msnr_x

