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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 29.11.2018

Pronounced on: 15.04.2019

+ **W.P.(C) 4555/2017, CM Appl. Nos. 39665-66/2017 & 21597/2018**

ESSAR POWER M.P. LTD. & ANR Petitioners

versus

UNION OF INDIA & ORS Respondents

+ **W.P.(C) 4556/2017, CM Appl. No. 18764/2018 & 48019-20/2018**

GMR CHHATTISGARH
ENERGY LTD & ANR Petitioners

versus

UNION OF INDIA & ORS Respondents

+ **W.P.(C) 4557/2017, CM Appl. No. 18770/2018**

GMR CHHATTISGARH
ENERGY LTD & ANR Petitioners

versus

UNION OF INDIA & ORS Respondents

Present:- Mr. Parag P. Tripathi, Sr. Advocate with Mr. Rishi Agrawala, Mr. Karan Luthra, Ms. Niyati Kohli, Ms. Mishika Bajyapayee and Mr. Akshay Bajpai, Advocates for the Petitioners in W.P.(C) 4555/2017.

Mr. Neeraj K. Kaul, Sr. Adv. with Mr. Rishi Agrawala, Mr. Karan Luthra, Ms. Niyati Kohli, Mr. Samar Kachwaha, Mr. Chanan Parwani and Mr. Ram Chandramadan, Advocates for Petitioners in W.P. (C) 4556/2017.

Mr. Sudhanshu Batra, Sr. Adv. with Ms. Richa Kapoor, Mr. Kunal Anand, Ms. Ayushi Rajput, Mr. Shivam Tyagi and Mr. Amritpal S. Gambhir, Advocates for Petitioners in W.P.(C) Nos. 4556/2017 & 4557/2017.

Ms. Maninder Acharya, ASG with Mr. Ripu Dhaman Singh Bhardhwaj, CGSC alongwith Mr. Sahil Sood, Mr. Harshul Choudhary and Mr. Viplav Acharya, Advocates for the Respondents/UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE PRATEEK JALAN

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1. These three petitions raise common questions regarding the tender process initiated by the Respondent, Union of India (hereinafter referred to as “the UOI”) in respect of various coal mines, pursuant to the judgment of the Supreme Court in *Manohar Lal Sharma v. Principal Secretary & Ors*, reported in (2014) 9 SCC 516 (judgment dated 25.08.2014), and in (2014) 9 SCC 614 (judgment dated 24.09.2014). The three petitions have therefore been heard together and are disposed of by this common judgment.

2. By the aforesaid judgments, the Supreme Court cancelled the allocation of several coal mines by the UOI. The UOI thereafter promulgated two ordinances namely the Coal Mines (Special Provisions) Ordinance, 2014 and the Coal Mines (Special Provisions) Second Ordinance, 2014 which were ultimately replaced by the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred to as “the

2015 Act”), notified on 30.03.2015. It also framed the Coal Mines (Special Provisions) Rules, 2014 on 11.12.2014. Under the said statutory regime, an order was issued on 26.12.2014 providing for the methodology for fixing the floor/reserve price for auction and allotment of coal mines/ blocks.

3. The petitioners in the present petitions are successful bidders for various coal blocks which were put to auction by the UOI after cancellation of the allotments in favour of the prior allottees. The auctions were held in February, 2015. The petitioners furnished bid security by way of bank guarantees at the time of bidding, and furnished performance bank guarantees upon being declared successful in the tender. They also entered into agreements entitled “Coal Mines Development and Production Agreement” with the UOI (hereinafter, “CMDPA”) and paid "upfront payments" and "fixed amounts" required thereunder. Vesting orders in respect of the coal blocks in question were also issued in their favour.

4. The grievance with which they approached the Court was that the UOI had issued a notification dated 16.04.2015 (hereinafter, “the said notification”), whereunder the fixed capacity charges payable for procurement of electricity were required to be capped at a ceiling to be determined in consultation with the concerned Electricity Regulatory Commission under Section 63 of the Electricity Act, 2013. The petitioners contented that the capping of the capacity charges was an entirely new condition imposed upon them after the auction had

concluded and the CMDPA had been signed. Although the validity of the said notification was challenged in the present petitions, during the course of hearing, the said challenge was not pressed. The petitioners instead submitted that, in view of the new conditions imposed under the said notification, they wished to withdraw from the contracts in question and press for release of the bank guarantees and refund of the monies paid by them to the respondent.

5. Mr. Parag P. Tripathi, Mr. Neeraj K. Kaul and Mr. Sudhanshu Batra, learned Senior Counsel appearing for the writ petitioners, placed considerable reliance upon the judgment of this Court dated 09.03.2017 in *Monnet Power Company Ltd. v. Union of India* and connected matters, reported in (2017) 239 DLT 10 (DB). They submitted that this Court had held therein that the said notification dated 16.04.2015, issued by the UOI, had drastically altered the conditions of the auction and that the successful bidders were therefore entitled to withdraw from the contracts and to release of the bid security submitted by them without penalty, with restitution of all the amounts that had been paid by them to the respondents and consequent release of the bank guarantees submitted by them. The petitioners claim to be similarly situated as the petitioners in the *Monnet Power* group of cases and thus entitled to relief in these petitions. The judgment in *Monnet Power* was challenged by the UOI before the Supreme Court in SLP (C) No. 031546-031548 - 2017 (Diary no. 18678/2017), which was dismissed by the order of the Supreme Court dated 09.10.2017.

6. Ms. Maninder Acharya, learned Additional Solicitor General appearing for the respondents, submitted that the UOI was compelled to issue the said notification in view of the fact that the petitioners (and other participants) had made unviably aggressive bids in the reverse auction for the coal blocks, so as to secure the agreements in their favour. Consequently, it was submitted that the UOI was required to pre-empt any corresponding move by the successful bidders to seek unconscionably high rates by way of fixed capacity charges for the power generated. She further contended that the said notification was, in fact, in the nature of guidelines issued by the UOI under Section 63 of the Electricity Act, and not an amendment or modification of the tendered contracts. According to Ms. Acharya, this argument was not considered in *Monnet Power*. Finally, she distinguished the judgment in *Monnet Power* on the basis that the petitioners therein had not executed CMDPAs for their respective coal blocks, and the mines in question had not already been vested in them. She argued that the present petitioners had approached the Court long after the said notification was issued – in fact, even after the judgment in *Monnet Power* had been rendered – and their delay and laches in enforcing their rights disentitled to the relief claimed.

7. The principal issue regarding the effect of the said notification on the auctions which had already been conducted is, in our view, concluded by the decision in *Monnet Power*. After considering the provisions of Section 63 of the Electricity Act, and the background in which the auctions were conducted, the Court held that the imposition of a ceiling on the fixed/capacity charges was not a matter within the

contemplation of the bidders. The consequent effect on the economics of the bid therefore entitled the petitioners therein to refund of the bid security furnished by them without any penalty. The aforesaid reasoning and conclusion are evident from the following paragraphs of the judgment in *Monnet Power*:-

“35. After examining the factual backdrop and the sequence of events which have taken place in the context of the present petitions, it is evident that the Standard Tender Document published on 27.12.2014 did not at all envisage the situation where, through the methodology of reverse bidding, the price bid could be reduced to rupees “zero”. It is for this reason that there was no concept of Additional Premium in the Standard Tender Document. Subsequently, when it was realised that there was a possibility that the reverse bidding process could be so aggressive as to reduce the price bid to rupees “zero”, the concept of Additional Premium was introduced. This was done through the said Corrigendum No.3 published on 31.01.2015. It was specifically pointed out that where the reverse bidding resulted in a price bid equivalent to rupees “zero”, nothing could be passed through as a component of energy charge other than the fixed rate of Rupees 100 per tonne and other permissible charges. It was specifically pointed out that the Additional Premium could not be a pass through item for the purposes of power tariff. But, as already observed earlier, all this was in the context of the energy charge. There was no mention whatsoever of the fixed/capacity charge component of the power tariff. When the bidders were bidding for the coal mines, which were earmarked for the power sector, they were obviously calculating their costs and benefits. It is obvious that as their costs would go up, their benefits would reduce. The price bid for coal would, therefore, automatically be dependent, amongst other things, on the ultimate estimation of the tariff of power

under the tariff bid regime under Section 63 of the Electricity Act, 2003 that may ultimately result. That power tariff had two components – energy charges and fixed/capacity charges. The Tender Conditions made clear stipulations with regard to energy charges and what could be passed through and what could not. But, the Tender Conditions were silent on fixed/capacity charges. Therefore, it would not be unreasonable to assume that when the petitioners made their bids in the auction, they would not have contemplated that the fixed charges/capacity charges would be subjected to a ceiling or a cap. What that ceiling would be is, of course, not known at the moment, but the fact is that there could be a ceiling. It would, therefore, not be wrong to observe that had the Tender Condition clearly indicated that there would be or could be a ceiling on fixed charges/capacity charges, the bids might have been entirely different as the economics would have changed.

36. In the course of arguments, it was indicated that the components of fixed charge/capacity charge was a function of depreciation, return on equity, interest on loan, operation and management costs and interest on working capital. It is evident that all the items mentioned above, were referable to actuals, except the item of “return on equity”. It is also clear that these items would be different for different IPPs. Without going into the question as to whether under the Electricity Act, 2003, the Government could or could not put a cap on fixed charges/capacity charges under the Section 63 regime, it is absolutely clear that the decision to do so would have an impact on the bidding for the coal mines and this is what is of material significance insofar as the present petitions are concerned.

37. We are of the view, as already pointed out above, that a decision to put a cap on fixed charges / capacity charges component of the power tariff would definitely have an impact on the bidding for the coal mines, which

were earmarked for the power sector. It is our view that when the petitioners participated in the auction, they were clear that (a) Rs 100 per tonne could be passed through to the energy charge component of the power tariff; and (b) the Additional Premium could not be passed through. The petitioners were, however, not aware that there would be or there could be a cap on the fixed charge / capacity charge component of the power tariff. We do not agree with the submissions made on behalf of the respondents that the bidders were aware that there could be a cap on the fixed charge / capacity charge. Therefore, the bidding proceeded on the basis that there would be no fixed charge / capacity charge. Whether this was ethically or morally correct or not is not the relevant issue. What is important is that the decision to place a cap on fixed charges / capacity charges would have impacted the bidding and consequently, the viability of the coal mines.

38. For these reasons, we are of the view that we need not deal with the first proposition as to whether the respondents could at all put a cap on the fixed charges / capacity charges under the Section 63 regime of the Electricity Act, 2003. However, since the decision to put a cap on fixed charges / capacity charges would have had an impact on the bidding process and this, in our view, was not known to the petitioners, the petitioners would be entitled to the alternative prayer of withdrawing from the bids and for refund of the bid security without any penalty. The writ petitions are allowed in part as above.”

8. In view of the above findings, which have already been rendered by this Court on similar facts (and against which the Supreme Court has also declined to interfere), we are not inclined to entertain any argument of the respondents which seeks to revisit the issues considered in *Monnet Power*. The argument of the UOI that the said notification was not, on its terms, one which modified the tender

conditions, but instead, a guideline contemplated under Section 63 of the Electricity Act, has also been substantively considered in *Monnet Power*. This is evident *inter alia* from paragraph 30 of the judgment (*supra*), where the relationship between the auction for the coal mine, and the tariff determined under Section 63 of the Electricity Act, has been specifically examined. We do not see any reason to differ from the findings reached by the Court in *Monnet Power*, and reject the submission advanced on behalf of the UOI in this behalf.

9. The only question to be determined, therefore, is what relief the petitioners are entitled to, in the facts and circumstances of these cases. The learned Additional Solicitor General has emphasised that the petitioners in the present case had approached the Court only after the judgment in *Monnet Power* and well after the execution of the agreement and issuance of the vesting orders in their favour. The Petitioners in *Monnet Power*, on the other hand, had come to the Court soon after the issuance of the said notification dated 16.04.2015. At that stage, none of those parties had yet signed the CMDPA, and the mines had also not been vested in them. It has been stated by the UOI that some of the installments paid by the petitioners by way of the “upfront payments” and “fixed amounts” have, in fact, been paid after the issuance of the said notification. These amounts have also, at least in part, been used to compensate the prior allottees whose mining leases were cancelled pursuant to the judgment of the Supreme Court. The UOI therefore urges that the petitioners are not entitled to relief in this much belated petition. In response to these contentions, the learned Senior Counsel for the petitioners have submitted that the

issuance of the said notification even after the execution of the CMDPA by them, was tantamount to a unilateral modification of a concluded contract, and was entirely contrary to law. They contend that the petitioners in these petitions have, in fact, been placed in an even worse position than those in *Monnet Power*, as they had progressed much further, pursuant to the auctions in question, by the time the said notification was issued, and have thus incurred substantially higher costs.

10. Factually, the position is largely undisputed. In all three cases, the auction and all related procedures, including the execution of the CMDPA were completed before the issuance of the said notification. As indicated above, the tender documents and the CMDPA contemplated payments characterised as “fixed amount” (*inter alia* for the value of the land and mine infrastructure, cost of licenses, permits, geological reports and transaction expenses) and “upfront amount” (to secure against a default by the bidder, payable in three installments). Pursuant to the CMDPA, the UOI was also required to issue vesting orders in favour of the allottees, and they were entitled to obtain mining leases from the State Governments. The dates on which these steps were completed by the parties, as available from the record, are tabulated below:

S.No.	Particulars	W.P. (C) 4555/2017	W.P. (C) 4556/2017	W.P. (C) 4557/2017
1.	Coal block	Tokisud North	Ganeshpur	Talabira

2.	Execution of CMDPA	02.03.2015	16.03.2015	02.03.2015
3.	Payment of fixed amount	20.03.2015	15.04.2015	20.03.2015
4.	Payment of upfront payment (first installment)	20.03.2015	15.04.2015	20.03.2015
5.	Issuance of vesting order	23.03.2015	-	23.03.2015
Notification issued by UOI on 16.04.2015				
	Issuance of vesting order	-	22.04.2015	-
6.	Payment of upfront payment (second installment)	25.02.2016*	NA	30.09.2015
7.	Payment of upfront payment (third installment)	28.09.2016	NA	30.03.2016
8.	Reimbursement of cost of geological report to prior allottee (from Fixed Amount)	24.05.2016	12.05.2016	24.05.2016
9.	Date of mining lease	03.12.2016	NA	NA
Writ Petitions filed on 20.05.2017				

*By invocation of bank guarantee

11. It is evident from the above that valuable contractual rights had accrued in favour of the petitioners even before the said notification

was issued. The vesting orders, which were made before the said notification in two cases, and soon after in the third, conferred certain rights upon the allottees under the 2015 Act. These included, *inter alia*, the rights, title and interest of the prior allottee and the entitlement to a mining lease, and required licenses from the concerned governments/authorities.

12. In the case of Essar Power Ltd. (petitioner in W.P. (C) No. 4555 of 2017, relating to Tokisud coal mine) (hereinafter referred to as “Essar”), the UOI issued Show Cause Notices (“SCN”) dated 08.10.2015 and 17.05.2016 to it as it had not paid the second and third installments of the upfront payment within the stipulated times. Essar’s responses dated 14.10.2015 and 30.05.2016 *inter alia* raised contentions regarding the state of the mine, delay in approvals, delay in transfer of private and government lands, and issues relating to the prior allottee. Upon being served with a notice dated 15.09.2016 for termination of the CMDPA, cancellation of the vesting order and appropriation of the performance security, Essar responded on 20.09.2016 and highlighted various impediments in the timely discharge of its contractual obligations. The reasons mentioned by Essar did not include the economic effects of the said notification. It sought resolution of various issues with the Government of Jharkhand, and an extension of time for signing the lease. Essar expressly refuted any suggestion that it would not be interested in going forward with the development of the mine, and indicated that the UOI could recover the delayed payment from the bank guarantee submitted by it. The

third installment of upfront payment was paid on 28.09.2016 and the mining lease registered on 03.12.2016.

13. GMR Chhatisgarh Energy Ltd. (hereinafter referred to as “GMR”) is the petitioner in both W.P. (C) Nos. 4556 and 4557 of 2017. These concern the Ganeshpur and Talabira mines respectively. As far as Ganeshpur is concerned, it did not remit the second or third installments of the upfront payment, or apply for the mining lease or forest clearance, within the stipulated time frame. SCNs dated 15.03.2016 and 21.03.2017 were addressed to it in respect of the latter two alleged infractions, and responded by its letters dated 25.03.2016 and 04.04.2017. Various contentions were raised to account for the delay, but there was no mention of the effect of the said notification dated 16.04.2015. In fact, GMR sought condonation of the delays and also, in the first of the two letters, assured the UOI that it would endeavor to start mining operations within the timeline stipulated in the CMDPA. The case of Talabira is slightly different from the other two cases, inasmuch as GMR actually worked the mine pursuant to the allotment in that case. Its production from the mine being short of the production as scheduled in the Mine Plan, it was issued a SCN dated 03.07.2017. Its response dated 18.07.2017 cited various factors which impeded its efficiency, and also referred to reasons which had prevented it from tying up the sale of the power generated. However, no reference was made to the said notification dated 16.04.2015 in this context either.

14. It is settled law that a writ court can, in appropriate cases, grant relief in a contractual dispute if the State or its instrumentalities are acting in a manner contrary to Article 14 of the Constitution. The Supreme Court, in *Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors.*, (1991) 1 SCC 212, declared unambiguously that Article 14 is applicable against the State even in its contractual relationships. There is also no scope for doubt as to whether an aggrieved party can assert its rights in this regard by way of a writ petition. Reference may be made to the decisions in *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Anr.*, (2004) 3 SCC 214, *Coal India Ltd. & Ors. vs. Alok Fuels Private Limited & Ors.*, (2010) 10 SCC 157, *ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd & Ors.*, (2004) 3 SCC 553, and the recent order of the Supreme Court in *Surya Constructions v. State of Uttar Pradesh* [C.A. No. 2610 of 2019, decided on 08.03.2019]. However, applying the general principles governing the exercise of writ jurisdiction, the grant of relief is discretionary, and depends upon the facts and circumstances of each case.

15. One of the factors which is required to be considered is that of delay and laches. Several judgments of the Supreme Court have discussed the effect of delay. In *Rup Diamonds & Ors. v. Union of India & Ors.*, (1989) 2 SCC 356, the Court observed:

“8. ... *Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided.*”

Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void.”

16. In *U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr.*, (2006) 11 SCC 464, the Court considered a question similar to the one with which we are faced, inasmuch as relief was sought belatedly, relying upon the judgment rendered in the case of another similarly situated party. The Court posed the issue before it in these terms:

“5. So far as the principal issue is concerned, that has been settled by this Court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this Court in Harwindra Kumar [Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300 : 2006 SCC (L&S) 1063] . Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this Court?

6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his

rights and challenged his retirement which was said to be made on attaining the age of 58 years... ”

Upon a consideration of *Rup Diamonds (supra)* and other authorities, as well as the statement of law in *Halsbury’s Laws of England*, the question was answered as follows:

“13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted...”

17. Both the aforesaid judgments were cited in *State of Uttar Pradesh & Ors. v. Arvind Kumar Srivastava & Ors.*, (2015) 1 SCC 347, and three principles were laid down:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time

to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

*22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to*

them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

The same principles have been reiterated even in the context of a fiscal statute in *Shoeline v. Commissioner of Service Tax & Ors.*, (2017) 16 SCC 104. However, although the Court upheld the levy of service tax in that case, it set aside the imposition of penalty and interest.

18. The consequence of the judgments discussed above is that, if a litigant has been tardy in approaching the Court, relief may be declined, particularly if its conduct demonstrates elements of acquiescence or waiver, or if other parties' positions (or third party rights) have been altered in the interregnum. The pendency of proceedings instituted by another party similarly placed also does not enure to the benefit of a somnolent litigant (except in a case where the judgment in the other case can be regarded as one *in rem*, for example, where a statutory impost has been held to have been unconstitutional).

19. Applying these principles to the facts set out above, we find that the petitioners in these cases did not raise any dispute with the UOI regarding the effect of the said notification until the judgment in *Monnet Power* had been rendered. Even when there was some contentious correspondence between the parties, the petitioners did not flag the consequences of the said notification as one of the reasons for their inability to act in terms of the agreements. In fact, they continued to act in pursuance of the allotments made in their favour. In all three cases, the UOI has also made payments to the prior allottees out of the amounts paid by the petitioners, to compensate them for preparation of

geological reports, and the Upfront Payments made have been transferred to the State Governments. Compensation for the land and mine infrastructure has also been disbursed to the prior allottee of the Tokisud and Talabira coal mines.

20. Learned Senior Counsel for the petitioners raised two contentions to refute the UOI's arguments on the aspect of delay. First, they confined their claims in these petitions to restitution of the amounts which they had paid prior to the said notification dated 16.04.2015. In our view, that cannot, in the circumstances of this case, come to their aid. Contractual rights and obligations had accrued to the parties even prior to this date. Their subsequent conduct did not disclose any grievance with respect to the said notification, or any intent to resile from the arrangement between the parties as a result thereof. Second, Mr. Tripathi, appearing for Essar, submitted that it had, in fact, raised various issues with regard to the delayed implementation of the project in a communication dated 29.06.2016 addressed to the UOI, and the payments made by it thereafter must be treated as having been made "under protest". We are unable to accept this argument as we do not find any reference to the said notification dated 16.04.2015 even in this letter, or indeed any reservation of Essar's rights. The letters by which the payments were made also do not record that they were made under protest.

21. Given the weight of binding authority as discussed above, we are of the view that it would not be appropriate for the writ court to afford relief to the petitioners in such circumstances. However, we

make it clear that we have arrived at this conclusion in view of the principles which govern the exercise of the Court's discretionary jurisdiction under Article 226 of the Constitution. The rejection of these petitions will not bar the petitioners from seeking relief through any other proceedings, contractual or otherwise, as they may be advised. In the event such proceedings are instituted, for the purposes of limitation, the time during which the present petitions were pending in this Court will be excluded under Section 14 of the Limitation Act, 1963.

22. For the reasons aforesaid, the writ petitions have to fail, and are dismissed, but subject to the liberty granted in paragraph 21 above. There will be no order as to costs. Pending applications also stand disposed of.

PRATEEK JALAN, J

S. RAVINDRA BHAT, J

APRIL 15, 2019