

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.737 of 2016

&

A.No.5358 of 2016

M/s. NRP Projects Private Limited,
Level - 1, Deshbandu Plaza,
No.47, Whites Road, Royapettah,
Chennai 600 014.

... Petitioner

Vs

1.M/s.Bharat Petroleum Corporation Limited,
No.1, Ranganathan Gardens,
Off: 11th Main Road, Anna Nagar,
Chennai - 600 040.

2.Mr.T.Thangavelu,
Sole Arbitrator,
No.1, Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai - 600 040.

... respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the second part/ second sentence of Relief VIII (A) of the award dated 30.06.2016 passed by the 2nd respondent directing the petitioner to furnish an Indemnity Bond supported with reliable security arrangement to be kept valid till the

litigation pending before the Hon'ble High Court of Telangana and Andhra Pradesh is disposed.

For Petitioner : Mr.K.Manoj Menon

For respondent 1 : Mr.O.R.Santhanakrishnan

ORDER

The claimant is the petitioner before this Court in the Section 34 petition filed challenging the award passed by the sole arbitrator. The facts in brief which has culminated in the filing of the above petition is herein below narrated.

2. The 1st respondent herein had floated four tenders for site grading, construction of tank pads and tankage, construction of internal roads and chain link fencing for their depot at Gooty, Andhra Pradesh. On 11.10.2010, the petitioner who had submitted the offer was declared as the successful bidder for all the tenders. The following Work Orders were issued to the petitioner herein.

*"(a) Contract No. CRFQ No.100128401 dated
25.01.2011 for work of Fabrication and Erection of Floating*

roof tanks 2 Nos Fixed roof tank 7 Nos A/G Horizontal tanks 2 Nos and U/G tanks 3 Nos at Gooty.

(b) Contract No.4503393650 dated 08.09.2011 for construction roads and drains etc.

(c) Contract No.4503596105 dated 05.03.2012 for providing Chain link fencing.

(d) Contract No.4503085242 dated 02.12.2010 for site grading works. ("Said Contract").

The Letter of Intent for this work/Contract was issued on 30.11.2010 ("LOI")."

These works were essential for commencing the Gooty depot.

3. It is the case of the petitioner that they had completed the work and the 1st respondent had taken over the same and the depot was also commissioned. However, the final bills were released only with reference to three of the contracts and for the fourth contract dated 02.12.2010 relating to site grading works disputes had arisen. The petitioner was therefore constrained to invoke the arbitration clause, namely, Clause 19 of the contract vide their letter dated

05.07.2014. As a consequence, the sole arbitrator was also appointed by the Director Marketing of the first respondent as per the terms of the Arbitration Clause in the Memorandum of Agreement dated 02.12.2010.

4. The petitioner would contend that as soon as the Letter of Intent (LOI) was received by them, they had mobilized men and machinery and had also submitted bank guarantee towards security deposit. However, they were unable to proceed with the work since the site engineer had not completed drawings which was necessary for the petitioner to commence the survey work as the boundary corners were not marked. The petitioner would submit that on 30.03.2011, the labour license was obtained and immediately the work had commenced in full swing and the same was completed on 30.09.2011. The petitioner was asked to submit the final bill vide the 1st respondent's letter dated 09.01.2012. The same was also forwarded by the petitioner under cover of the letter dated 20.04.2012 along with "As built" documents including the initial ground level and finished graded level and field density report for earth filling. The petitioner

had forwarded the bills totalling a sum of Rs.1,00,28,051.44/-

5. Meanwhile, on 08.08.2012, the 1st respondent had forwarded the letter dated 16.07.2012 issued by the Mines Department, Government of Andhra Pradesh demanding payment of Seigniorage charges and penalties. The 1st respondent had directed the petitioner to pay the sum. A perusal of this letter would indicate that the 1st respondent Corporation had filed an appeal and after the appeal had been dismissed a fresh request was made by the first respondent vide their letter dated 14.08.2012. The petitioner clarified that they had only purchased sand from the dealers and had not mined any gravel or metal. The petitioner proceeded to pay the sum of Rs.4,43,840/- towards Seigniorage charges and the one time penalty as against the four time penalties demanded. The petitioner had made it clear that the penalty four times did not arise.

6. The 1st respondent by their letter dated 22.08.2012 insisted on the petitioner to pay the said amount and on the basis of this letter the Mines Department had also addressed a letter dated 28.08.2012

calling upon the petitioner to pay the dues.

7. Since the bills were not being paid the petitioner addressed the letter dated 26.10.2012 to the 1st respondent reiterating the delay and requesting them to refer the disputes to arbitration.

8. The petitioner had filed a review against the demand made by the Mines Department and the same was allowed on 25.06.2013, whereby, the petitioner was directed to pay normal Seigniorage charges for 343 Cubic Metres and the additional penalty on sand was waived. The 1st respondent as the end user was directed to pay the Seigniorage charges for the gravel excavated at its site. This information was forwarded by the petitioner to the 1st respondent vide letter dated 25.07.2013, wherein, the petitioner also informed that they were taking steps to pay the amounts directed by the Mines Department.

9. Thereafter, on 21.10.2013, the Department of Mines and Geology, Government of Andhra Pradesh issued a fresh demand

directing the petitioner to pay a sum of Rs.34,300/- and the 1st respondent a sum of Rs.72,99,600/- as Seigniorage charges. The petitioner complied with the demand on 24.10.2013. Thereafter, the petitioner submitted the sixth and final bill and followed it up with reminders dated 03.12.2013, 11.12.2013 and 19.12.2013.

10. The petitioner would submit that the 1st respondent had challenged the demand made by the Mines Department by filing W.P.No. 33417 of 2013 on the file of the High Court of Andhra Pradesh by contending that the provisions of Rule 36 of the Andhra Pradesh Minor Mineral Concession Rules will not apply as the gravel which has been excavated from the 1st respondent's site has been once again used only therein. This Writ Petition is still pending final results. The petitioner would contend that though the 1st respondent had certified all the bills, however, the payment had not been effected. Therefore the Claim.

11. The main thrust of the 1st respondent's counter was that as per the provisions of Clause 17 of the agreement the petitioner was

obligated to pay all the public dues and therefore the payment of Seigniorage charges was solely the responsibility of the petitioner. The 1st respondent would contend that on 25.11.2011, the Department of Mines and Geology, Andhra Pradesh had issued show cause notice to the 1st respondent as to why the Seigniorage charges along with five time penalty cannot be levied. The 1st respondent would contend that the challenging this show cause notice they had filed W.P.No. 33417 of 2013, which is now pending before the High Court of Andhra Pradesh. The 1st respondent had also obtained interim orders of stay and the matter continues to be pending.

12. The 1st respondent would contend that the amounts were not paid to the petitioner in view of;

(a) The pendency of the Writ Petition before the High Court of Telangana and Andhra Pradesh.

(b) The claimant had not indemnified the 1st respondent for the claims of the statutory department and the 1st respondent was made to receive the demand.

13. The 1st respondent had made a counter claim for a sum of

Rs.5,60,42,706.30/- under the following Heads:

- i) ESI/PF
- ii)Liquidated damages
- iii)Royalty
- iv)Cess
- v)Loss of interest
- vi)Litigation expenses

14. The sole arbitrator who had entered reference by the award dated 30.06.2016 passed the following award:

"The relief to the claimant is with respect to the amount of Rs.64,35,386/- which becomes payable to the claimant against the Bills submitted in furtherance to their completing the jobs assigned to them. The said sum to be released without any interest for the reasons stated supra against the claimant furnishing a valid Indemnity Bond supported with reliable security arrangement which would be valid throughout till such time the on going litigation pending before the Hon'ble High Court of Telengana and

Andhra Pradesh is disposed / resolved amongst the parties;

A. The relief to the respondents is with respect to indemnification for the seigniorage charges to the tune of Rs.72,99,600/- along with interest as claimed by the Department of Mines and Geology, Andhra Pradesh in its entirety by way of an indemnity bond supported by security for the same amount, by the claimant within 6 weeks from the receipt of the award.

B. Submission of No - Dues certificate by the claimant with respect to the various statutory bodies as mentioned in detail in the relevant issue within 6 weeks from the receipt of the award."

15. The learned arbitrator had framed eight issues and on considering the documents filed on either sides has arrived at the above conclusion. Aggrieved by the said award the petitioner is before this Court.

16. Mr. K. Manoj Menon, learned counsel arguing on behalf of

the petitioner would contend that the work entrusted to the petitioner was earth excavation and earth filling. The demand made by the Department of Mines and Geology, Government of Andhra Pradesh dated 21.10.2013 has clearly detailed the amounts that are repayable by the petitioner and the 1st respondent respectively. The Department has split the claim into Item:1 and Item:2. Item:1 related to the Seigniorage charges fee for gravel at the rate of Rs.22 per Cubic Metres for a total quantity of 55,300 Cubic Metres along with five times penalty at Rs.72,99,600/- payable by the respondent. Item:2 is the amount that is payable by the petitioner with reference to the metal calculated at the rate of Rs.50 per Cubic Metres and the total quantity was 343 Cubic Metres. Calculating the one time penalty the total amount that was payable by the petitioner was arrived at a sum of Rs.34,300/-.

17. The counsel would further argue that though the arbitrator had raised the following issue, namely, "Is the 1st respondent entitled to a sum of Rs.72,99,600/- towards Seigniorage charges from the

petitioner as claimed by the Department of Mines, Government of Andhra Pradesh?", the Learned Arbitrator has proceeded to hold that since the Writ Petition is pending in W.P.No.33417 of 2013 before the High Court of Andhra Pradesh he was not deliberating upon the same. Despite making the above observation the learned arbitrator has proceeded to interpret clause 17 of the agreement signed between the parties relating to statutory requirements to arrive at the conclusion that the petitioner was liable to make the payment.

18. The counsel would further contend that the learned Arbitrator has proceeded beyond the terms of the contract by observing that having signed a standard format for contract the petitioner was bound to comply with its terms since otherwise it would set a bad precedent. Despite holding that the matter is subjudice before the Court the Learned Arbitrator has erred in holding the petitioner is liable to indemnify the 1st respondent for the Seigniorage charges to the tune of Rs.72,99,600/-. The counsel would further submit that in response to the first show cause notice the 1st respondent had rightly filed an appeal invoking the provisions of Rule

35 of the Andhra Pradesh Minor Minerals Concession Rules and has also initiated proceedings by filing Writ Petition before the High Court of Telangana and Andhra Pradesh. He would contend that the 1st respondent Corporation has rightly understood that the liability to pay the said amount was entirely that of the first respondent.

19. The counsel would substantiate the above contention by drawing the attention of the Court to Ex C8 letter dated 09.01.2012 issued by the first respondent. By this letter the first respondent has called upon the petitioner to submit their final bill along with the initial and final levels in lying with the procedure and terms mentioned in subject agreement. Further by their letter dated 20.04.2012 (Ex.C.9) they had called for documents from the petitioner which were also forwarded by the petitioner to the 1st respondent. The initial demand made by the Department of Mines and Geology was on 08.12.2011 which was challenged by the 1st respondent. The demand dated 21.10.2013 (Ex.C.22) is only a follow up of the earlier demand dated 08.12.2011. He would submit that the first respondent is wrongfully withholding the payments due to the petitioner and therefore they are

liable to pay interest on the amount withheld from the petitioner's bills.

20. The learned counsel would therefore submit that the learned Arbitrator by proceeding outside the terms of the arbitration agreement had proceeded to mulct the Seigniorage charges on the petitioner. He would further contend that the entire contract amount was only a sum of Rs.1,44,76,875/- and if the agreement between the parties was that, the arguments that the liability to pay the sum of Rs.72,99,600/- as Seigniorage charges fee is that of the petitioner is to say least absurd. He would therefore seek to have the award set aside on the grounds of patent illegality.

21. Mr. O.R. Santhanakrishnan, learned counsel appearing for the 1st respondent Corporation would contend that Clause 17 of the agreement is a statutory requirement which made it clear that the petitioner should confirm to the provisions of the acts of the Parliament or the State legislature and should obtain requisite consent and permission from the authority concerned and keep the 1st respondent Corporation indemnified against any claims, penalties and loss that

may be incurred by reason of a breach by the contractor of Statutory By-laws, Rules and Regulations etc.

22. He would therefore contend that having signed the agreement the petitioner cannot claim interest as there is no agreement between the parties to charge interest. He would also contend that as per the provisions of Section 31 (7) (a) of the act, the petitioner could not claim interest as there was no agreement between the parties. He would further refer to the letter dated 16.07.2012 received by the 1st respondent from the Assistant Director of Mines and Geology (Vigilance), Gooty calling upon the petitioner to pay the Mineral Revenue dues to the Andhra Pradesh Government and failing which informed the 1st respondent that they would be responsible for the payment.

23. The counsel would further draw the attention of this Court to the letter dated 28.08.2012 once again addressed to the first respondent by the Assistant Director of Mines and Geology (Vigilance), Gooty. The said letter refers to the earlier letters and instructs the 1st

respondent to direct the petitioner to pay the amount demanded forthwith. He would therefore contend that it is only the petitioner who is liable to pay the said sum and that the Government has also made the demand on the petitioner.

24. He would further draw the attention of the Court to the letter dated 31.08.2012 of the petitioner addressed to the 1st respondent requesting them to intervene in the issue of Seigniorage charges. In this letter the petitioner has stated that if the intervention of the 1st respondent Corporation did not yield favourable results the petitioner would be constrained to make the payment as demanded. The learned counsel would therefore contend that in the light of such a categoric statement the petitioner cannot now go back on their commitment.

25. He would also draw the attention of this Court to the Letter of Intent dated 30.11.2010, wherein, it has been made clear that the petitioner should comply with all the Rules and Regulations and laws of the Central as well as State Governments or any other competent

authority. He would therefore submit that even under the Letter of Intent it has been made clear that the responsibility of paying the public dues was entirely the liability of the petitioner. The counsel would argue that the Purchase Order dated 02.12.2010, has clearly stipulated that the price has been fixed for the following work:

"Supplying and Filling earth obtained from approved quarries or equivalent quality free from all organic vegetation and foreign matter including all royalties, taxes, handling and transportation to site, staking the same at the side of trench if required etc."

He would therefore submit that even the purchase order which is as early as on 02.12.2010 has reiterated that the responsibility of paying the royalties, taxes etc, was the absolute duty of the contractor. In these circumstances he would contend that the award cannot be called into question as it was only as per terms agreed between the parties. He would rely on the following Judgements in support of his arguments:

i) ***Rashtriya Ispat Nigam Limited Vs. Dewan Chand Ram Saran*** reported in ***(2012) 5 SCC 306.***

ii) National Highways Authority of India Vs. ITD Cementation India Limited reported in **(2015) 14 SCC 21**

iii) Novadaya Mass Entertainment Limited Vs. J.M.Combines reported in **(2015) 5 SCC 698**

iv) Associate Builders Vs. Delhi Development Authority reported in **(2015) 3 SCC 49.**

26. The counsel for the petitioner while replying drew the attention of the Court to the Rules framed under the Andhra Pradesh Minor Minerals Concessions Rules with particular attention to Rules 5, 10 and 20. The counsel would contend that Rule 5 clearly presupposes that in order to undertake the quarrying of any minor mineral the pre requisite is that the person undertaking the quarry should obtain a quarry lease or permit from the Government as provided by the rules.

27. The learned counsel would submit that Rule 10 relates to Seigniorage charges or dead rent. This Rule makes it clear that Seigniorage charges or fee or dead rent is payable when the quarry lease is granted under the rules. Once the quarry lease is granted the

person in occupation of the property is bound to not only pay the assessment of land but he has also to pay the Seigniorage charge fee or the dead rent whichever is higher.

28. Rule 20 of the Andhra Pradesh Minor Mineral Concessions Rules, would set out the rights granted under the rules whereby the lessee is permitted to quarry, carry away, sell or dispose of the minor minerals or minerals specified in the lease deed and found upon the lands specified therein.

29. The learned counsel would therefore contend that the instant case was simplicitor a work contract under which the petitioner was bound to remove the excess sand, level the same and in the course of such levelling to purchase sand or gravel from outside sources in order to complete their contract. The petitioner has not undertaken an quarry work by entering into a lease agreement with the Government. He would therefore contend that the petitioner by no stretch of imagination would come under the term lessee as defined in the Andhar Pradesh Minor Mineral Concession Rules. He would further

argue that clause 17 upon which the 1st respondent lay emphasis is only a general term in the contract of this nature and its not a special term, whereby, Seigniorage charges becomes payable by the petitioner. The counsel would also contend that there is a delay on the side of the 1st respondent which is evident from Ex.C.8 letter.

30. In support of his arguments the counsel for the petitioner had submitted the following Judgements:

i) ***J.K. Cotton Spinning and Weaving Mill Co. Ltd, Vs. State of Uttar Pradesh and others*** reported in ***AIR 1961 SC 1170***.

ii) ***China Cotton Exporters Vs. Beharilal Ramcharan Cotton Mills Ltd*** reported in ***AIR 1961 SC 1295***.

iii) ***Food Corporation of India Vs. Chandu Construction and another*** reported in ***2007 (4) SCC 697***.

iv) ***Delta International Ltd, Vs. Shyam Sundar Ganeriwalla and another*** reported in ***1999 (4) SCC 545***.

v) ***Associate Builders Vs. Delhi Development Authority*** reported in ***2015 (3) SCC 49***.

vi) ***Mohd. Shahabuddin Vs. State of Bihar and others***

reported in **2010 (4) SCC 653.**

vii) **Adamji Lookmanji and Co. and others Vs. State of Maharashtra and another** reported in **2007 (1) Mh.L.J. 408.**

31. With reference to interest the counsel has cited the following Judgements:

i) **Secretary, Irrigation Department, Government of Orissa and others Vs. G.C.Roy** reported in **1992 (1) SCC 508.**

ii) **Vedanta Ltd. Vs. Shenzen Shandong Nuclear Power Construction Co. Ltd.,** reported in **2018 SCC OnLine SC 1922.**

iii) **Reliance Cellulose Products Limited Vs. Oil and Natural Gas Corporation Limited** reported in **2018 (9) SCC 266.**

Discussion:

33. The crux of the matter relates to the liability to pay Seigniorage Charges to the Government of Andhra Pradesh and the party who has to pay the same- "Whether the payment has to be effected by the petitioner herein who is the contractor and the claimant before the arbitral Tribunal or by the respondent who had

engaged the services of the contractor for the works specified in the contract?"

34. The first respondent would place reliance upon Clause 17 of the agreement entered into between the petitioner and the respondent which reads as follows:

"17. Statutory Requirements: *The contractor shall conform to the provisions of Acts of Parliament or State Legislatures and to any bye-laws, rules, orders or notifications of any Government, Municipal or local authority for the time being in force affecting the work undertaken by him and will give all necessary notices to and obtain requisite sanction and permits of and from the Municipal and any other authority in respect of the said work of the materials to be used thereat and generally will comply with building and other regulations of such authorities and will keep the company indemnified against all claims, penalties and losses that may be incurred by it by reason of any breach by the contractor of any statutes*

bye-laws, rules, regulations, notifications etc.”

“The contractor undertakes to ensure due and complete compliance with all laws, regulations, rules etc. Whether of the Central Government or the State Government or of any other competent authority applicable to the workmen employed or whose services are otherwise availed of by the Contractor whether in connection with the construction work at the site or otherwise. The Employer shall have the right to inspect the records maintained by the contractor concerning such workmen from time to time and the contractor shall whenever require by the Employer produce such record as the Employer may call upon the Contractor to produce for the Employer's inspection in order to ascertain whether or not the requirements of all such laws, regulations, rules etc. have been complied with by the contractor. In the event of any contravention of such laws, regulations, rules etc. coming to light whether as a result of such inspection or otherwise the Employer shall have the right to require

the Contractor to effect such compliance within such time as the Employer may prescribe in that behalf and in the event of the contractor failing to effect such compliance within the time prescribed by the Employer then the Employer shall without prejudice to his rights be entitled to withhold from the amount payable to the Contractor any amount payable to the workmen under any such laws, regulations or rules to make payment thereof to the workmen. The employer shall also have in that event the right to terminate the contract with immediate effect and to exercise powers reserved to the Employer under the contract as a result of termination."

35. The contention of the petitioner is that this is only a general term and does not pertain to the payment of seigniorage charges. The contention of the respondent, as already stated, is that the liability of the petitioner to pay the Seigniorage charges is clearly stated in the above clause. Since both parties choose to give different interpretations to this clause, it is necessary to understand clause 17

of the agreement. Clause 17 provides as follows:

a) Contractor shall conform to the provisions of the act passed both by the Central and State Governments.

b) Contractor shall conform to bye-laws, rules, orders or notifications of any Government, Municipal or local authority which are in force for the time being.

c) To give necessary notice to and obtain sanction and permits from the Municipal or any other authority regarding the work undertaken and materials to be used there it.

d) To comply with building and other regulations.

e) Keep the company indemnified against all claims, penalties and losses that the signatory would incur by reason of any breach committed by the contractor or any statute By-laws, rules, regulations notification etc.,.

36. Therefore, the contractor had undertaken to discharge the above onus. It is also clear that when the parties had entered into an agreement there was no demand for Seigniorage charges from the Government of Andhra Pradesh. Another clause which has to be

considered is the one in the Purchase Order dated 02.12.2010 bearing No.450308524 which was the Purchase Order that was given by the respondent. In the said Purchase Order the following has been stated.

*"Supplying and Filling earth obtained from approved quarries or equivalent quality free from all organic vegetation and foreign matter **including all royalties, taxes, handling and transportation to site**, stacking the same by the side of trench if required, spreading in layers not exceeding 300 mm, watering, compacting by mechanical means by power driven roller/vibratory compactor of minimum 8-10 tonne capacity, testing at various stages to obtain 95% of standard proctor or 90% modified proctor maximum laboratory dry density, removing the surplus material etc. complete as per specification and direction of site Engineer.*

Earth Work in excavation/cutting over areas in soft rock (not requiring blasting), disposal of excavated material for a lead upto 100 m and for all lifts, disposed earth to be levelled and neatly dressed etc. complete as

per specifications and direction of site engineer.”

37. In the Purchase order there is a mention about the royalty, taxes, handling and transportation to site etc., The records would show that the 1st respondent has approached the High Court of Telangana and Andhra Pradesh questioning the levy of Seigniorage charges and it appears that the petitioner is also a party to the said proceedings. In the said proceedings, the 1st respondent has questioned the right of the Government to levy Seigniorage charges since the work involved was not quarrying business and that the contractor was engaged only for the purpose of earth filling for which purpose the contractor had to procure sand, gravel and metal to fill up those areas where earth fill was required.

38. Therefore it is clearly evident that the contractor was only purchasing these materials from the open market and transporting it to the site for the purpose of earth filling. The arbitrator on considering the fact that the 1st respondent has challenged the levy of Seigniorage charges, has not gone into the issue of the correctness of

the levy or the fixing of liability-whether the petitioner has to indemnify the 1st respondent the Seigniorage charges paid by them and also whether the 1st respondent was entitled to claim the Seigniorage charges from the petitioner as demanded by the Andhra Pradesh Department of Mines and Geology. The learned arbitrator with a view to protecting the interest of both parties till the disposal of the Writ Petition before the High Court of Telangana and Andhra Pradesh has passed the impugned order which reads as follows:

"A. The relief to the claimant is with respect to the amount of Rs.64,35,386/- which becomes payable to the claimant against the Bills submitted in furtherance to their completing the jobs assigned to them. The said sum to be released without any interest for the reasons stated supra against the claimant furnishing a valid Indemnity Bond supported with reliable security arrangement which would be valid throughout till such time the ongoing litigation pending before the Hon'ble High Court of Telangana and Andhra Pradesh is disposed / resolved amongst the parties:

B. The relief to the respondents is with respect to indemnification for the seigniorage charges to the tune of Rs.72,99,600/- along with interest as claimed by the Department of Mines and Geology, Andhra Pradesh in its entirety by way of an indemnity bond supported by security for the same amount, by the claimant within 6 weeks from the receipt of the award.

C. Submission of No-Dues Certificate by the claimant with respect to the various statutory bodies as mentioned in detail in the relevant issue within 6 weeks from the receipt of the award.”

39. The issue in this petition only relates to the interpretation of the terms of agreement between the petitioner and the first respondent which the Arbitrator has interpreted in a particular manner. The Arbitrator has directed the petitioner to recover the money from the 1st respondent by furnishing an indemnity bond which will be alive till the disposal of the Writ Petition filed before the High Court of Telangana and Andhra Pradesh. The Arbitrator has only directed the

petitioner to provide an indemnity bond to the extent of the amount which would be kept pending till the disposal of the Writ Petition filed before the High Court of Telangana and Andhra Pradesh.

40. This is not a case of the arbitrator not having considered the terms and conditions of the agreement but case where the Arbitrator has interpreted the Agreement in a manner different from the petitioner but which interpretation is also plausible. That apart by their letter dated 31.08.2012, referring to the letter received from the Department of Mines and Geology (Vigilance) Andhra Pradesh, the petitioner has requested the 1st respondent to intervene and sort out the issue (which is the payment of Seigniorage charges). In the said letter the petitioner has categorically stated that if the intervention by the first respondent does not resolve the issue then the only option was that the said amount should be deducted from the pending payments of the petitioner. The learned Arbitrator has taken into consideration the pendency of the Writ Petition and has directed the payment of the amount to the petitioner on their furnishing necessary indemnity bond till the disposal of the Writ Petition.

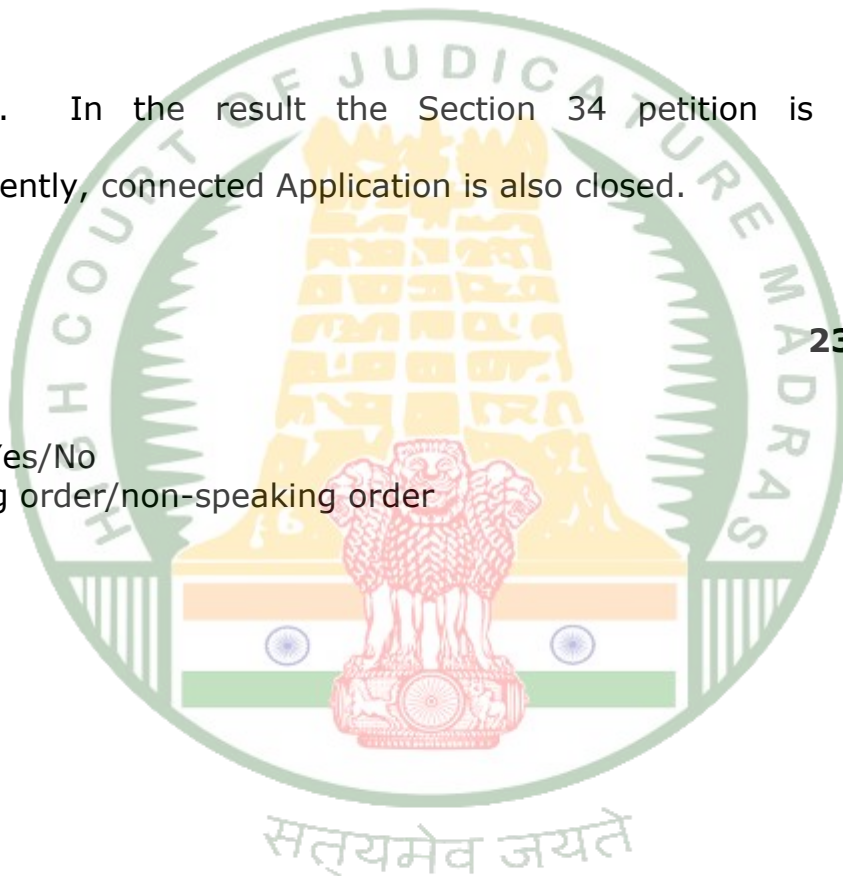
41. By this order both parties are protected. The Learned Arbitrator has made it clear that towards the Signiorage charges of Rs.72,99,600/- the petitioner is required to submit an indemnity bond supported by security for the equivalent amount only till the disposal of the Writ Petition. Further as regards the payment of interest, considering the fact that the payment had been withheld by reason of the demand by the Government of Andhra Pradesh, the first respondent cannot be mulcted with interest. Therefore it is a well considered award which not only takes into account the terms of contract but also the correspondence and the earlier relationship between the parties with reference to the payment of Seigniorage charges. The learned counsel for the petitioner has no doubt made his submission about how the levy of Seigniorage charges in respect of this contract is against the provisions of the Andhra Pradesh Minor Mineral Concession Rules, 1966. However this is an argument which has to be made before the High Court of Telangana and Andhra Pradesh where the Writ Petition, in which the petitioner is also a party, is pending. I therefore do not find any infirmity in the order passed by

the arbitrator. The Judgements which have been relied upon by the petitioner does not apply to the facts of the case. In the instant case, not only does the agreement have a clause mulcting liability of the petitioner but reiterated in the purchase order.

42. In the result the Section 34 petition is dismissed. Consequently, connected Application is also closed.

23.01.2020

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Index : Yes/No
Speaking order/non-speaking order

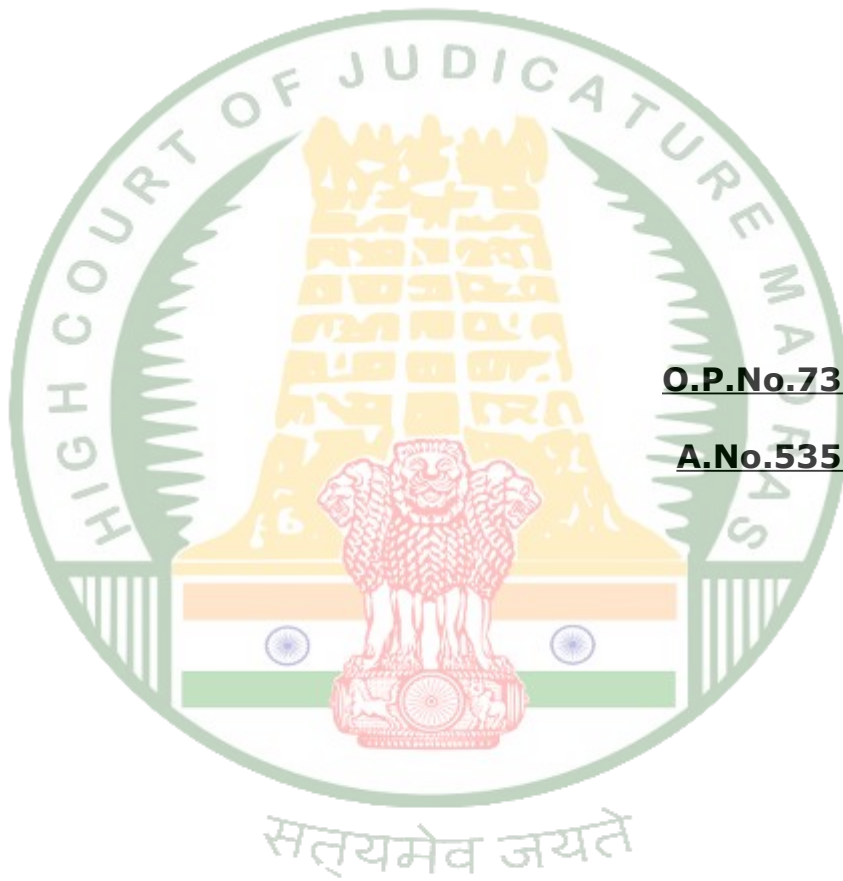


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