

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5441/2021

R.K. Transport & Company Limited,
a company duly incorporated under the Companies
Act, 1956 having its registered office at HIG-7, Behind
Madan Complex, Shankar Nagar, Sector -2 Raipur -
492001, Chhattisgarh through its Director Sushil Singhal.

PETITIONER

.....VERSUS.....

1. Maharashtra State Power Generation Company Ltd.
Through the Chairman cum Managing Director,
Prakashgad, Plot No.G-9, Bandra (East), Mumbai-400 051.
E-mail: csmahagenco@gmail.com
2. The Chief Engineer (Fuel Management),
Maharashtra State Power Generation Company Limited,
Prakashgad, 3rd Floor, Bandra (East), Mumbai – 400 051.
3. The Chief Engineer (Stores),
Maharashtra State Power Generation Company
Limited, Prakashgad, 2nd Floor, Bandra (East),
Mumbai – 400 051. Email: eeSTORESIQC@mahagenco.in
4. The Deputy Chief Engineer (Fuel Management-III),
Maharashtra State Power Generation Company
Limited, Urja Bhawan, Administrative Building,
Koradi, Nagpur – 441 111.
5. Maheshwari Coal Benefication and Infrastructure
Private Limited, Near Sirgitti Railway Overbridge,
Hi-Tech Engineering Works, Parsada, Sirgitti,
Bilaspur – 495 223, Chhattisgarh.

RESPONDENTS

**WITH
WRIT PETITION NO. 5444/2021**

Balaji Ventures Pvt. Ltd.
A company duly incorporated under the Indian
Companies Act, 1956, having its registered office
at 71/A, Krishna House, ST Bus Stand Road,
Ganeshpeth, Nagpur 440018. Through its Authorized
Signatory Kishor Himmatlal Agrawal.

PETITIONER

.....VERSUS.....

1. Maharashtra State Power Generation Company Ltd.
A Government corporation incorporated under the
Indian Companies Act, 1956, having its registered
office at Prakashgad, Plot No.G-9, 3rd floor, Bandra
(East) Mumbai-400 051, Through its Chief Engineer.

2. Maheshwari Coal Benefication and Infra Pvt.Ltd.
Siding Near Sirgitti Railway Overbridge, Behind
Hi-Tech Engineering Works, Parsada, Sirgitti,
Bilaspur – 495 223.

RESPONDENTS

Shri C.B. Dharmadhikari, counsel for the petitioner in W.P. No.5441/2021.
Shri D.V. Chauhan, counsel for the petitioner in W.P. No. 5444/2021.
Shri M.P. Khajanchi, counsel for the respondent no.1 in both the petitions.
Shri S.P. Dharmadhikari, Senior Advocate with Ms Payal Bawankule, counsel
for the respondent 5 in W.P. No.5441/2021 and for respondent no.2 in W.P.
No.5444/2021.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 24TH JANUARY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the
learned counsel for the parties.

2. On 02.12.2021, the Maharashtra State Power Generation
Company Limited-Principal floated a tender inviting bids for
transportation of raw coal against Road-cum-Rail allocation from various
mines of South Eastern Coalfields Limited to various Thermal Power
Stations of the Principal. Clause 1.12(V) which is the contentious clause
that has given rise to these writ petitions reads as under:

“1.12(V) Railway Siding:-

*Bidder should have permission / consent of
Maheshwari Coal Benefication and Infra Pvt.Ltd. Siding (MMBD
Siding) owner to operate the siding on SECR Bilaspur division for
dispatch of coal to All TPS of Mahagenco.*

*Permission / consent of MMBD siding owner to
operate the siding should be submitted along with the bid, failure*

which the bid will not be considered. The siding should be available for the entire period of the contract.”

This clause has been challenged as being arbitrary, capricious and violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. Shri M.P. Khajanchi, learned counsel for the respondent no.1-Principal has raised a preliminary objection to the maintainability of the writ petition before this Court on the ground that no cause of action has arisen within the territorial jurisdiction of this Court so as to enable the petitioners to raise a challenge to the tender document. He submits that the challenge raised to the tender document is in the context of Clause 1.12(V) by which a bidder is required to obtain permission/consent of a Private Siding Agent while transporting the coal. Involvement of a third party in the tender process has been objected to by the petitioners. The aforesaid clause requiring permission of the Private Siding Agent who operates from Bilaspur, Chhattisgarh is under challenge. The coal mines in question are situated at Kusmunda/Gevra/Dipka mines of South Eastern Coalfields Limited, Korba. The tender document has been published at the head office of the Principal at Mumbai and no part of cause of action has arisen at Nagpur so as to enable the petitioners to approach this Court. There were no specific averments to indicate the manner in which such cause of action has arisen before this Court. Reliance is placed on the decision in *VSP Acqua Mist Fire Pvt.Ltd.*,

Nagpur Versus Maharashtra State Electricity Transmission Company Ltd., Mumbai & Others [2010(2) Mh.L.J. 575] in that regard.

Shri S.P. Dharmadhikari, learned Senior Advocate for the respondent no.2 supports this objection.

4. Shri D.V. Chauhan and Shri C.B. Dharmadhikari, learned counsel appearing for the petitioners opposed aforesaid submissions and contended that since part of cause of action had arisen within the jurisdiction of this Court, the writ petitions were rightly filed at Nagpur. Referring to the provisions of Article 226(2) of the Constitution of India, it was submitted that even if a part of cause of action arose within the jurisdiction of this Court, the writ petition could be entertained notwithstanding the fact that the tender was issued from Mumbai and the Private Siding Agent was situated at Bilaspur, Chhattisgarh. The doctrine of Forum Conveniens was sought to be invoked in this regard. Reliance was also placed on various clauses in the tender document and especially Clause XVIII wherein various definitions were given as well as Clause 2.7 to indicate that the Deputy Chief Engineer at Nagpur had a role to play in the contract. The fact that coal was to be transported to all thermal power stations was also relevant. Reliance was placed on the decision in *Kusum Ingots & Alloys Ltd. Versus Union of India & Another* [(2004) 6 SCC 254] in that regard and it was submitted that since Writ Petition No.5260 of 2021 was filed prior in time and was entertained wherein a

similar challenge was raised, these writ petitions also deserve to be entertained on merits.

5. We have heard the learned counsel for the parties on the aspect of maintainability of the writ petitions in the light of the objection raised on the ground of territorial jurisdiction. It is undisputed that under Article 226(2) of the Constitution of India even if part of cause of action arises within the jurisdiction of this Court, the writ petition could be entertained. The material aspect to be considered is the “cause of action” for raising a challenge to the tender document dated 02.12.2021. For considering this aspect, the challenge as raised by the petitioners in that regard would have to be taken into consideration. The specific challenge raised is to Clause 1.12(V) by which a bidder is required to obtain a permission/consent of a Private Siding Agent while undertaking transport of coal under the contract. In the present tender, the coal mines are situated at Kusmunda/Gevra/Dipka with the South Eastern Coalfields Limited, Korba. The Private Siding Agent is located at Bilaspur, Chhattisgarh. The challenge as specifically raised is to the involvement of a private party in the process of transportation *vis-a-vis* the Private Siding Agent located at Bilaspur, Chhattisgarh. The petitioners contend that introduction of such private party causes prejudice to the petitioners since the rates at which services would be rendered by the Private Siding Agent

would govern the manner in which financial bids would be made by the petitioners. In other words, the presence of the Private Siding Agent located at Bilaspur, Chhattisgarh is the bone of contention according to the petitioners that has resulted in challenging Clause 1.12(V). The transportation in question in the context of the challenge raised would be required to be executed at the siding where the respondent no.2 operates. This is at Bilaspur, Chhattisgarh. But for the presence and involvement of the respondent no.2, there was no other reason to challenge the tender notice. The tender document was published from Mumbai and the bids are also to be finalized at Mumbai. We find that no part of cause of action arises within the jurisdiction of the Nagpur Bench of this Court to enable the writ petitions to be entertained except the fact that the petitioner in Writ Petition No.5444 of 2021 has its office at Nagpur. This position has been considered in *VSP Acqua Mist Fire Pvt.Ltd., Nagpur* (supra) while holding that such aspects would not confer territorial jurisdiction.

6. Though it was sought to be urged that the Deputy Chief Engineer (Fuel Management – III), Nagpur had a role to play in the contract, it is seen that involvement of the said Authority is after issuance of the work order and Clause 2.7 to which reference has been made finds place in Section II of the tender conditions with regard to the scope of the

work and other terms and conditions. In other words, that Authority would be involved only after a bid of a bidder is accepted and he is issued the work order. At the present stage the bids are to be submitted and it is thereafter that the aspect of issuance of work order would arise. Hence, at this stage, there is no question of said Authority being involved. In this regard reference can be made to the decision of the Hon'ble Supreme Court in *Union of India Versus Adani Exports Ltd.* [(2002) 1 SCC 567] wherein it was held that each and every fact pleaded does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such that have a nexus or relevance with the *lis* that is involved in the case.

7. We therefore find that since no part of cause of action arises within the jurisdiction of this Court, the writ petitions are not liable to be entertained on merits. Accordingly, both the writ petitions are not entertained on merits and they are disposed of with a liberty to the petitioners to approach the Court having territorial jurisdiction to entertain the challenges as raised. Needless to state that the points raised in the writ petitions are kept open. Rule stands discharged. No costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)