

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 22039 OF 2021

Between:

M/s VPR Mining Infrastructure Pvt. Limited, A Company incorporated under the Companies Act, 1956, having its registered office at No.8-2-293/82/A/1259, 3rd Floor, Laxmi Towers, Road No.36, Jubilee Hills, Hyderabad - 500033, Represented by their authorized signatory, Shri. R.V.Ramana Rao,

...PETITIONER

AND

1. The Singareni Collieries Company Limited, A Government Company incorporated under the Companies Act, 1956, Having its Reg.Off at Kothagudem Collieries - 507101, Bhadradi Kothagudem District (T.S), Rep. by its Chairman and Managing Director.
2. The Project Officer, M/s The Singareni Collieries Company Limited, MNG OCP, Manuguru - 507117 Bhadradi Kothagudem District, (T.S).
3. The General Manager (Contract Management), M/s The Singareni Collieries Company Limited, P.O. Kothagudem Collieries, Bhadradi Kothagudem District, (T.S), PIN - 507101.

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or a direction, more particularly a writ in the nature of Mandamus or any other writ declaring that contract awarded to the petitioner by the Respondent vide Order dated 13.05.2019 based on the permission dated 28.02.2017 issued by the DGMS Authorities, without conducting proper scientific studies as to the impact of conducting blasting operations by using bulk explosives near to the OHT Lines within 500 mtrs of danger zone as being illegal, arbitrary, unconstitutional and in clear violation of Coal Mines Regulations Rules, 2017 leading to major deviation to the scope of work under NIT dated 15.10.2018 and Order dated 13.05.2019 and consequently directing the Respondents to close the contract and settle the final bill of the petitioner.

(prayer is amended as per Court Order dated 13.09.2022 in I.A.No.1 of 2022)

I.A.NO:1 OF 2021

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to issue required gate passes to the Petitioner for shifting its equipment and machinery from the project site pending disposal of the present writ petition.

**Counsel for the Petitioner: SRI A. SUDERSHAN REDDY, SENIOR COUNSEL
FOR Ms. A. DEEPTHI**

**Counsel for Respondents : SRI E. MADAN MOHAN RAO, SENIOR COUNSEL
FOR SRI M. ARJUN,
SC FOR SINGARENI COLLIERIES**

The Court made the following ORDER.

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.22039 of 2021

ORDER:

This writ petition is filed to declare action of the respondents in not foreclosing the contract under clause 1.13.3 of the order dated 13.05.2019 as being unconscionable, arbitrary and unconstitutional and in clear violation of the express terms of the Notice Inviting Tender (NIT) dated 15.10.2018 and the order dated 13.05.2019 and consequently, to direct the respondents to foreclose the contract and settle the final bill of the petitioner.

2. According to the petitioner, the contract was awarded by the respondent No.1 by misrepresentation, which resulted in impossibility of performance by the petitioner due to major deviation to the scope of work under NIT dated 15.10.2018 and order dated 13.05.2019.

3. It is averred in the writ affidavit that:

(a) The respondent No.1 released Tender Enquiry No.E1118O0296 dated 15.10.2018 with Tender ID 89772 inviting prospective eligible bidders for the work 'Drilling, excavation, loading, transportation, dumping, spreading and levelling etc of 1505.210 LBCM of overburden (i.e. 1475.253 LBCM of In-situ OB including top soil and 29.957 LBCM of horizon coal) with hired

HEMM in combination with conventional equipment and formation of flood protection bund with 31.286 LBCM of BC Soil and In-situ top soil and 20.842 LCM of rehandling of top soil with conventional equipment and additional works namely shovel hours, dozer hours and drilling meterage at MNG OCP Project, MNG Area during a period of 72 months'. The total value of the work to be executed by the petitioner including GST @ 18% is 203582.13 INR (in lakhs). The petitioner submitted bank guarantees towards performance on 01.07.2019 for a total sum of Rs.7,18,86,400/-.

(b) Clause 1.1 of Part-A of NIT dated 15.10.2018 corresponding to Clause 1.1 of the order dated 13.05.2019 reads as under:

"1.1.1. Excavation of 1557.338 LBCM/LCM of overburden (i.e. 1475.253 LBCM of In-situ OB including top soil, 29.957 LBCM of horizon coal, 31.286 LBCM of BC Soil and 20.842 LCM of rehandling of top soil) as per terms and conditions indicated in this NIT at MNG OCP Project, MNG Area during a period of 72 months. The work shall be carried out continuously till the completing of the contract."

(c) It is stated that NIT provided for achieving the total quantity under the contract by deployment of specialized machinery i.e. Heavy Earth Moving Machinery (HEMM), with progressive year-wise quantities by conducting controlled deep hole blasting in the

mine, for which the petitioner was informed that the respondents had general blasting permission from the Mines Safety Authority. The petitioner quoted the rates and the viability of the contract was on the aspect of general blasting, no hindrances to the work and to the use of HEMM. The terms of NIT provided for penalty in case of non-achievement of monthly and yearly progress.

(d) As per clause 1.1.2 of NIT, the contractor has to prepare the site and carry out drilling as per the requirement by using crawler mounted diesel drilling equipment with wet drilling arrangements. Under Clause 1.1.1(a) of NIT corresponding to Clause 1.1.1(a) of the order dated 13.05.2019, the Singareni Collieries Company Limited (SCCL) will procure required explosives and accessories and conduct blasting operations. Under Clause 1.10(p) of NIT corresponding to Clause 1.10(p) of the order dated 13.05.2019, the manpower required for handling of explosives, charging, stemming and assistance to short firer etc. shall be provided by successful bidder. Under Clause 1.10(q) of NIT corresponding to Clause 1.10(q) of the order dated 13.05.2019, the SCCL ensures that the blasted material do not contain more than 5% of the boulder size and more than 1/3rd of the opening of the bucket of the excavator. Under Clause 1.10(r)(xxvi) of NIT corresponding to Clause 1.10(r)(xxvi) of the order dated 13.05.2019 provides for arrangement of track mounted drilling in

the quarry. Under Clause 1.10(r)(ii) of NIT corresponding to Clause 1.10(r)(ii) of the order dated 13.05.2019, the contractor (petitioner), during the first year of contract, shall form a flood protection bund to River Godavari around the quarry and part of dump yard, which the petitioner has completed. In terms of Clause 1.1.3, the petitioner shall deploy HEMM in combination with maximum (5) units of conventional equipment for excavation of OB.

(c) It is stated that the petitioner has mobilized HEMM and employed sufficient number of men and machinery by incurring huge expenditure in crores of rupees, executed the work without any default, with progress achievement of 106.19% of the target by the end of the first year. However, there were certain hurdles at the work site, due to usage of different kinds of explosives used for blasting resulting in poor fragmentation and thereby affecting progress of the work, as well as other payment related issues, which were promptly pointed out and brought to the notice of the respondent No.2 through letters dated 30.08.2020, 12.10.2020 and 23.12.2020 by the petitioner. The respondents, in the review meeting held on 12.10.2020, instructed the petitioner to achieve production of 1 lakh Cum per day from 84615 Cum per day. Based on the instructions, the petitioner mobilized additional machinery and manpower. The respondent No.2 issued two letters on 18.01.2021 directing the petitioner to slowdown the work of

overburden removal due to non-availability of working areas. Petitioner vide letter dated 21.01.2021 replied and requested to provide 3rd year area for overburden removal to utilize men and machinery to the maximum, for which there was no reply from the respondents.

(f) It is stated that subsequently the respondents failed to provide sufficient required explosives for deep hold blasting due to which the petitioner was unable to utilize the scheduled equipment and machinery and was also unable to carry out excavation to meet the scheduled targets. The petitioner also suffered huge losses on account of idling the equipment and machinery and manpower as well due to non-availability of area for overburden and on account of idling charges. Letters dated 20.02.2021, 03.03.2021 and 08.03.2021 were addressed by the petitioner bringing to the notice of the respondents the defaults committed by them in complying with their obligations under the contract. On account of which the petitioner was made to incur huge financial losses as about 75% of the schedule machinery and manpower was forced to be idle. The petitioner, in the circumstances, requested the respondents to shift/divert the unengaged machinery and employees from the work site to its other sites as the idling charges were mounting on heavily resulting in huge financial loss to the petitioner.

(g) To the astonishment and shock of the petitioner, during the visit of the Deputy Director of Mines Safety on 23.07.2021, he had learnt that SCCL did not obtain any permission from the Directorate of Mines Safety for conducting deep hole general blasting within 500 meters of High Tension Power Transmission Lines of the State Transmission Corporation of Telangana Limited (TS TRANSCO) and diversion of HT Lines as well as restricting the blasting operations near Godavari River bank. The SCCL has also suppressed the above vital information in the NIT nor informed the same to the prospective bidders during the site visit before submission of the tender. The respondent No.1 obtained only the general blasting permission prior to commencement of mining operations. The respondent No.1 ought to have obtained special permission as may be required to conduct deep hole controlled blasting within 500 meters of danger zone from the safety embankment of Godavari River prior to the framing of NIT dated 15.10.2018 by incorporating the same in the terms of NIT. The petitioner stated that in view of not disclosing the relevant fact, the contract is impossible to be performed for the quantities to be extracted and as it has become uneconomical, which caused serious loss to the petitioner.

(h) It is stated that NIT floated with mandatory specifications for deployment of HEMM for execution of the contract, for

excavation of specified quantity of overburden within the specified period requires vast working areas and spacious working phases, which is impossible without general deep hole blasting, as initially given to understand by the respondents at the time of floating the tender and awarding the contract by controlled deep hole blasting. In case of controlled deep hole blasting, working with HEMM is highly uneconomical and unviable, the said work is required to be done only with conventional equipment (small equipment). The respondent No.1 failed to consider the above while floating NIT which in turn, resulted in impossibility of performance, adversely affecting production and financials of the petitioner as the controlled blasting clause proposed to be brought into effect after conclusion of the contract and during execution and after deployment of required scheduled equipment (HEMM) under such concluded contract. If the contract is continued by conducting deep hole controlled blasting, the deployment of scheduled equipment (HEMM) in terms of NIT and order would become completely redundant, resulting in huge financial losses to the petitioner. The work with HEMM is highly expensive than working with the conventional equipment (small equipment). While quoting the tender, the petitioner could not have assessed the production losses and financial impact by working with HEMM, on account of

controlled blasting as against general blasting, which was considered at the time of floating of the tender.

(i) The petitioner vide letters dated 16.04.2021 and 17.04.2021 requested to obtain permission in terms of NIT scope, but the respondents have not shown any interest to do so and remained conspicuously silent. The above circumstances resulted in reduction in the 2nd year target quantities substantially because most of the working area was kept unused after visit of the Deputy Director of Mines Safety due to non-obtaining of required deep hole controlled blasting permission by the respondents inline with the scope of NIT and the petitioner was forced to deploy its HEMM in the limited, restricted and congested working areas in spite of the same being not advisable considering the safety and productivity. The targets and the quantities were framed in the contract with the idea that the contractor can achieve the same by general blasting and not by controlled blasting. The restriction in working within 500 meter zone from Godavari River embankment has also reduced the area of operation for removal of overburden. The reduction in the quantity was due to the mistake of the respondent authorities.

(j) The petitioner invoked clause 1.14 of the order dated 13.05.2019 by referring the dispute, at the first instance, to the Mine Management Committee, then to the Area Management Committee and followed by Corporate Management Committee.

If the dispute or disagreement is not resolved as state above, the same shall be decided by Civil court of competent jurisdiction at Bhadradi Kothagudem District and not by arbitration. It appears that the Mine Management Committee held meeting on 23.04.2021. It is submitted that the respondents never attempted to resolve the dispute and also subjected the petitioner to non-payment of periodical monthly bills. The petitioner addressed several letters under Ex.P10. The issue was brought to the notice of the Chairman and Managing Director of the respondent No.1. The petitioner came to know that subsequently the respondents submitted application to the Director of Mines Safety on 27.05.2021 and also on 14.06.2021, seeking permission to conduct blasting operation within 500 meters from protective embankment and HT Transmission Lines (within the danger zone), which clearly indicate that the respondents have illegally got conducted the blasting operations in restricted zone of 500 meters from the Godavari Flood Protection Bund for the past two years, without any prior approvals from the DGMS.

(k) The petitioner came to know that the Director of Mines Safety, on scrutiny of the applications made by the respondents, issued communication clearly stating that until permission is granted under the Regulation 196(3) of the Coal Mines Regulations, 2017, no blasting operations shall be conducted within 500 meters

of the protective embankment and 200 KV and 400 JV overhead Transmission Lines. In spite of the instructions of the Director of Mines Safety, the SCCL is not only carrying blasting operations within 500 meters from protective embankment and 200 KV and 400 KV OH Transmission Lines (at the danger zone) but also insisting the petitioner to remove the overburden from the area under blasting by adopting the execution methods in contravention to the permission of DGMS limiting the deep hole blasting in a controlled manner. It is submitted that the above acts of the respondents are in clear violation of the Mining and Safety Rules. In a similar contract executed by the petitioner at PK OCP, Manuguru area vide Order No.76000008424 dated 30.09.2020, the respondents have specifically mentioned in the order at Clause 1.109(s) (xiv) that blasting in the fire or near structures or near Gorripeta Vagu Bund should be done as per DGMS permissions/circulars, which requires controlled blasting. But in the present contract, the respondents have not considered similar aspect and proceeded with inviting tender and awarded the contract to the petitioner, which the petitioner could not have imagined that such situation would arise in future. Petitioner participated in the tender in good faith, considering NIT terms and conditions as to scope of work and other production targets.

(1) The petitioner addressed a letter dated 18.05.2021 specifically bringing to the notice of the respondent No.2 as to the responsibility of the contractor for implementation of the conditions mentioned in the permission letters given by the statutory authorities from time to time as required under Clause 1.9 of the order dated 13.05.2019 and requested to provide copy of the conditions issued by the DGMS authorities including working near the transmission lines to implement the same to avoid violations. In reply, the respondent No.2 issued letter dated 30.07.2021 furnishing permission details with respect to establishing mine boundary, removal of overburden, regular use of explosives etc. but the said letter did not disclose any permissions from the Director of Mine Safety with respect to obtaining permissions in respect of protection bund for Godavari River and Overhead Transmission Lines. In the above circumstances, the petitioner had no other alternative except to rescind the contract, which resulted in impossibility of performance of the contract by the petitioner due to major deviation to the NIT scope of the work. Finally, the petitioner got issued legal notice dated 24.07.2021 to the respondents demanding for foreclosure of the contract and settle the account within seven days from the date of receipt of the said notice. It is submitted that Clause 1.13.3 of the NIT dated 15.10.2018, corresponding to Clause 1.13.3 of the order dated 13.05.2019,

provides for foreclosure of contract due to unforeseen circumstances.

(m) The respondent No.3 replied to the legal notice vide its letter dated 03.08.2021 inviting the petitioner to attend a meeting on 05.08.2021. The meeting was held between the representatives of the petitioner and the respondent No.1. The issue regarding absence of furnishing proper blasting permission in line with the NIT scope of work was raised from the petitioner side and it was asserted that the petitioner cannot be compelled to continue the work as there is a major deviation from the NIT conditions. As there was no other alternative, the petitioner was compelled to stop the work on 06.08.2021. The respondents not only failed to file reply to the legal notice dated 24.07.2021 but also failed to obtain permission for blasting operation in line with NIT scope of work. The respondent No.2 vide letter dated 06.08.2021 contended that the Directors of the respondent No.1 opined that all important issues raised by the petitioner are resolved and advised to continue the OB excavation operations; stopping work by the petitioner on 06.08.2021 is illegal and requested him to start the work immediately. The respondent No.2 further informed the petitioner that permission for blasting is obtained to conduct deep hole controlled blasting operation within 500 meters of flood protection embankment and OHT Power Lines vide permission letter dated

05.08.2021 and requested the petitioner to start the OB excavation work.

(n) It is submitted that on perusal of the permission dated 05.08.2021, it can be clearly understood that permission accorded for conducting blasting operation is a conditional one wherein deep hole blasting is to be conducted in a controlled manner, which is not in line with the NIT amounting to a major deviation to the NIT and scope of work. From the contents of the said permission dated 05.08.2021, it can clearly be proved and established that NIT dated 15.10.2018 was issued without any permission, which renders the invitation and subsequent awarding of contract is non-compliance of statutory requirements and as such, the contract shall be foreclosed among the parties to mitigate the losses.

(o) It is submitted that thereafter with the intervention of Senior Management of both the petitioner and the respondent No.1 the parties came to an understanding that the petitioner would restart the work stopped on 06.08.2021 and continue the work for a period of 30 days, subject to joint study of blasting fragmentation on day to day basis for adopting the conditions imposed by the DGMS and resolving all the issues by the respondents pertaining to the blasting operations to be conducted, which are restricted to a large extent consequent to issuance of permission by DGMS dated 05.08.2021, which led to major deviation to the scope of work

executed by the petitioner. The petitioner addressed letter dated 09.08.2021 agreeing to restart the work stopped on 06.08.2021 subject to resolution of the issues within 30 days as assured by the respondents and initiate steps for foreclosure of the contract as demanded in legal notice dated 24.07.2021. The respondents requested the petitioner to restart the work by letter dated 09.08.2021. The petitioner restarted the work from 10.08.2021 but the project officials of the respondent No.1 continued to restrict the petitioner from utilizing the scheduled equipment for the excavation work by interfering with the drilling operations and controlled blasting operations, notwithstanding the depth of holes drilled to charge sufficient explosives, keeping in view the fragmentation of the rock and quantity for removal of OB, which are in the scope of the work of the petitioner. The petitioner addressed several letters to the respondents not to interfere with the drilling operations, as the same is within the scope of the work. The petitioner requested the respondent No.2 to adopt proper blasting operations considering the targeted quantities and requested to furnish details of explosives being used for blasting and also involve the project officials of the petitioner company in charging of explosives and other allied activities, for which the respondents refused and denied several letters stating that the respondents are not practising any illegal activities and as such, the petitioner is not entitled to the

same and the drilling pattern and blasting operations are in the scope of the respondents.

(p) As the respondents continued to interfere with the drilling operations and controlled blasting operations, notwithstanding the depth of holes, the petitioner addressed letter dated 24.08.2021 to furnish details of each blast and also to involve the project officials of the petitioner in charging and blasting operations. The respondents remained unresponsive. Thereafter, the petitioner addressed several letters. The respondent No.2 contended that they had been complying with the recommendations of scientific studies and blasting permissions to conduct safe blasting in the mine from the inception of the mine, which are neither considered at the time of issuance of NIT nor copies of such recommendations were furnished to the petitioner at any point of time from the inception of the contract. The petitioner has invested Rs.350 crores (approximately) on the equipment as on date apart from availing huge amounts from banks and financial institutions for working capital assistance and if the respondents do not foreclose the contract in view of major deviation to the scope of contract under NIT and order dated 13.05.2019, the same would lead to impossibility of performance resulting in severe liquidity crisis for the petitioner.

4. In the counter filed by the respondents, it is stated that:

(a) The writ petition is not maintainable under Article 226 of the Constitution of India. There is dispute settlement mechanism provided under Clause 1.14 of the Purchase Order. The petitioner filed the writ petition without invoking the said clause and without exhausting the remedy available under the contract. On this ground alone, the writ petition is liable to be dismissed. The petitioner is not entitled to claim foreclosure of contract. Clause 1.13.3 provides for foreclosure of contract if the work is to be stopped due to imposition of any law or change in law brought by the Government or the Court direction. The operative part of the said Clause reads as under:

"Clause 1.13.3 Due to Unforeseen Circumstances:

SCCL reserves right to Foreclose the contract at any stage; If the work is to be stopped due to imposition of any law/change in law brought by Government or court directives or for any reasons beyond the control of SCCL without levying penalties. In such event payments shall be made only for the portion of the work executed on the principle of quantum merit. No payment shall be made for shifting of equipment or personnel of the contractor or any other compensation."

(b) The petitioner participated in the tender and was declared as L1. Work order was issued to the petitioner on 13.05.2019. Work was commenced on 16.05.2019 and would expire on 15.05.2025. the petitioner successfully executed the contract for a

period of 2 years 3 months 16 days till August 2021 and still 3 years 8 months 15 days period of contract remains unexecuted for the reasons best known to the petitioner. After knowing fully well all the terms and conditions of the work order and NIT, the petitioner participated in the tender and signed all the required documents. The allegations made by the petitioner are not true and correct.

(c) The respondents have been conducting controlled blasting since beginning of the contract. The petitioner has achieved 102.4% of mutually agreed quantity initially, which indicates that production and financials were not affected due to controlled blasting. Letters dated 30.08.2020, 12.10.2020 and 23.12.2020 addressed by the petitioner did not contain any mention regarding poor fragmentation or payment related issues as averred by the petitioner. Letter dated 30.08.2020 related to providing working areas and requesting the respondent to cooperate to achieve 110% to receive FSD back as such the letter did not contain any mention regarding poor fragmentation or payment related issues. Letters dated 12.10.2020 and 21.12.2020 did not contain any mention regarding poor fragmentation or payment. As per the daily progress report submitted by the petitioner, the number of equipment was not at all increased as alleged in the affidavit. The deployment of

manpower and availability for the period from September 2020 to December 2020 was quoted in para 13 of the counter affidavit.

(d) In the month of January 2021, the surface coal stock was 2.42 LT and there was no further space to dump coal. Hence, it was advised to restrict the excavation of bottom benches (Coal & OB benches) beneath 700 RL and to deploy HEMM in upper benches and it was advised to deploy equipment in top benches. This did not affect the performance of the petitioner. As per clause 1.12(a) of the order dated 13.05.2019, shortage of explosives will be taken under *Force Majeure*. The short supply of explosives was company level and national level issue due to changed policies of the Government not to stock more quantity of explosives in their Sea ports. However, the issue was dealt with by higher authorities of the respondent company and many initiatives were taken to restore the situation to normalcy. The Explosives Manufacturing (SMS) Plant was available at Manuguru area, which belongs to the respondent company. As such, proper arrangements were made for the supply of explosives from SMS plant of the respondent company and other private explosive manufacturers and the said issue of shortage of explosives was resolved. The respondents have furnished details of explosives supplied from SMS plant of the respondent company in para 16 of the counter affidavit. However,

the respondents have also furnished details of OB excavation performance of the petitioner in para 17.

(e) It is stated that the petitioner has surpassed the mutually agreed quantities, which indicate that there were no major hurdles to the petitioner for achieving the scheduled targets. The respondent company applied for blasting permission from January 2019. As the application for permission was in process, the respondent company provided adequate number of working places at other than permitted areas resulting in achieving of scheduled targeted OB excavation by the petitioner. The area stopped by DGMS authorities was 500 meters from OHT transmission lines. However, there are sufficient working places still available in the mine for sustained OB production levels by the petitioner. The area of 1.2 KM length, 0.6 KM width with 10 number of benches of 30 m to 40 m width was available for working by the petitioner. The DGMS permission was obtained to conduct blasting operation on 05.08.2021 and the same was informed vide letter No.MNG/MNGOCP/L-10/877 dated 06.08.2021. Since March 2021 till date, the petitioner was not deploying sufficient number of equipment as required under purchase order even though there was adequate supply of explosives by the respondent company.

(f) The petitioner stopped blasting operations intentionally on several dates despite availability of sufficient quantity of explosives.

In earlier work issued to the petitioner vide NIT 09.11.2013 and order dated 26.04.2014, similar conditions existed. The said mine was also adjacent to River Godavari and in the NIT or the order, the controlled blasting was not mentioned whereas in the permission for blasting, controlled blasting conditions were imposed and the petitioner followed the same. The petitioner deployed HEMM at Medipalli OCP also similar to Manuguru Opencast. The petitioner is familiar with such type of working environment and he earlier worked in similar conditions and similar NIT, order and permission conditions but now the petitioner is falsely pointing out that he is not aware of such conditions. The respondents have been conducting controlled blasting since the beginning of the contract and the petitioner is aware of the same. It is stated that as per NIT, all the successful bidders shall study the mine plans, field visit and site conditions before quoting for bids. If there are any doubts, the bidders can clear the doubts in the pre-bid meet conducted before floating of tenders.

(g) It is stated that as per Clause 1.14 of the order dated 13.05.2019, there is a three level dispute resolution mechanism. If the dispute is not resolved, then the matter has to be decided by a civil Court at Bhadrachalam District. Without invoking the said clause, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

(h) It is stated that the percentage of achievement of petitioner was 101% for the second year, which was possible only because of resolving the issues by the respondents from time to time. The interactions were happening daily during site inspection of the Manager and Project Officer of the respondent company. The bills were paid by the respondent company whenever presented by the petitioner and an amount of approximately Rs.257 crores were paid by the respondent to the petitioner. The respondent has got deep hole blasting permission and other permission required from time to time. There was no shortage of work place since mine is having adequate dimensions. The petitioner is well aware of the work condition of the project and he is familiar with such type of working. The respondents tried to resolve the issues. The petitioner stopped the work on its own accord and commenced the work from 09.08.2021 and intentionally slowed down their work by drilling less number of holes for blasting, not deploying sufficient shovels and dumpers, thus, intentionally forced the respondent company to foreclose the contract and cause irreparable loss to the respondents.

(i) The respondent company issued fresh NIT dated 13.09.2021 as an advance action as the petitioner has not started OB excavation operations in spite of several requests made by the respondent company. The respondent company was constrained to

float fresh NIT as the production of the company has been hampered leading to several other difficulties as coal is an essential commodity for power generation. The respondent issued corrigendum dated 23.09.2021 only to the extent of rectifying the technical aspects in the NIT. Except that there no changes in the NIT dated 13.09.2021. As the process would take three to four months to complete, advance action was initiated. If the petitioner is ready to execute the contract by commencing the work, the respondent company is even ready to withdraw the NIT dated 13.09.2201 within reasonable time.

5. Mr. A. Sudershan Reddy, learned senior counsel, appearing for Ms. A. Deepthi, learned counsel for the petitioner, submitted that the writ petition is maintainable in the given circumstances of the case. The respondent company did not adhere to the terms and conditions of the NIT and the order dated 13.05.2019. There are no disputed questions of fact. The issue only revolves around non-performance of contract by the respondent-company which was demonstrated by the petitioner. The respondent-company did not obtain requisite permission and the scope of the contract has become unconscionable. The action of the respondent-company is arbitrary, as the respondent-company has deviated from the terms and conditions of the contract. On account of major deviation of the terms of NIT and the order dated 13.05.2019, it has become

impossible for the petitioner to perform the contract and the petitioner is entitled to invoke Clause No.1.13.3 of the order dated 13.05.2019.

6. On the other hand, Mr. E. Madan Mohan Rao, learned senior counsel, appearing for Mr. M. Arjun, learned standing counsel for SCCL, submitted that there are serious disputed questions of fact involved in the instant case. The foreclosure of the contract on account of impossibility of performance of the contract is in the realm of the civil law and not for the Constitutional Courts to adjudicate such disputes. The workability of the contract can never be subject matter of adjudication under Article 226 of the Constitution of India. The petitioner miserably failed to perform its obligations under NIT and order dated 13.05.2019. The petitioner achieved required targets in the first two years and therefore, the contention of the petitioner that permissions were not obtained and there was deviation of contract, is only an afterthought. Though writs can be entertained in contractual matters, there is a limited scope for a writ Court only when special circumstances are made out, which are lacking in the instant case.

7. Learned senior counsel for the petitioner relied upon the following judgments:

UNITECH LIMITED v. TELANGANA STATE INDUSTRIAL INFRASTRUCTURE CORPORATION (TSIIC) LTD¹; UNION OF INDIA v. TANTIA CONSTRUCTION PRIVATE LIMITED²; SHRIPATI LAKHU MANE v. MEMBER SECRETARY, MAHARASHTRA WATER SUPPLY AND SEWERAGE BOARD³; UBEROI MOHINDER SINGH AND ASSOCIATES v. STATE OF HARYANA⁴; NATIONAL SAMPLE SURVEY ORGANISATION v. CHAMPA PROPERTIES LIMITED⁵ and HARBANSLAL SAHNIA v. INDIAN OIL CORPORATION LIMITED⁶.

8. In **UNITECH LIMITED's** (1 supra), the Supreme Court held as under:

"38. Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing, learned Senior Counsel appearing on behalf of the State of Telangana and TSIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. Learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear

¹ 2021 SCC OnLine SC 99

² 2011 SCC OnLine SC 644

³ 2022 SCC OnLine SC 383

⁴ (1991) 2 SCC 362

⁵ 2009 SCC OnLine 1245

⁶ 2002 SCC OnLine 1259

the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.

39. A two judge Bench of this Court in *ABL International Ltd. v. Export Credit Guarantee Corporation of India* [(2004) 3 SCC 553] analyzed a long line of precedent of this Court to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution. Speaking through Justice N Santosh Hegde, the Court held:

"27. ...the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

41. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an

evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."

In **TANTIA CONSTRUCTION PRIVATE LIMITED's** case

(2 supra), the Supreme Court held as under:

30. We are of the view that the letter dated 12-4-2008, did not cover the extended work on account of the alteration of the design and was confined to the work originally contracted for. We cannot lose sight of the fact that while the initial cost of the tender was accepted for Rs. 19,11,02,221.84, the costs for the extended work only was assessed at Rs. 24.50 crores and that two offers were received, which were for Rs. 34,11,16,279.39 and Rs. 35,89,93,215.66 respectively. This was only with regard to the extended portion of the work on account of the change in design. The respondent Company was expected to complete the entire work which comprised both the work covered under the initial tender and the extended work

covered by the second tender. The respondent had all along expressed its unwillingness to take up the extended work and for whatever reason, it agreed to complete the balance work of the initial contract at the same rates as quoted earlier, despite the fact that a long time had elapsed between the awarding of the contract and the actual execution thereof.

31. In our view, the respondent Company has satisfactorily explained their position regarding their offer being confined only to the balance work of the original tender and not to the extended work. The delay occasioned in starting the work was not on account of any fault or lapses on the part of the respondent Company, but on account of the fact that the project design of the work to be undertaken could not be completed and ultimately involved the change in the design itself. The respondent Company appears to have agreed to complete the varied work of Tender No. 76 of 2006-2007 which variation had been occasioned on account of the change in the design as against the entire work covering both the first and second tenders. To proceed on the basis that the respondent Company was willing to undertake the entire work at the old rates was an error of judgment and the termination of the contract in relation to Tender No. 76 of 2006-2007 on the basis of the said supposition was unjustified and was rightly set aside by the learned Single Judge of the High Court, which order was affirmed by the Division Bench."

In **SHRIPATI LAKHU MANE's** case (3 supra), the Supreme Court held as under:

18. It is fundamental to the Law of Contract that whenever a material alteration takes place in the terms of the original contract, on account of any act of omission or commission

on the part of one of the parties to the contract, it is open to the other party not to perform the original contract. This will not amount to abandonment. Moreover, abandonment is normally understood, in the context of a right and not in the context of a liability or obligation. A party to a contract may abandon his rights under the contract leading to a plea of waiver by the other party, but there is no question of abandoning an obligation. In this case, the appellant refused to perform his obligations under the work-order, for reasons stated by him. This refusal to perform the obligations, can perhaps be termed as breach of contract and not abandonment.

19. It is interesting to note that the respondents did not choose, (i) to allege breach of contract against the appellant; and (ii) consequently to invoke the right to rescind the contract under clause 3(a). The respondents, if they were justified in doing so, could have taken recourse to the remedy available under Section 75 of the Contract Act and sought compensation for the damage sustained through the non-fulfillment of the contract. On the contrary they attributed abandonment to the appellant (without understanding the true purport of the word 'abandonment') and refused to honour the claims made by the appellant.

In **UBEROI MOHINDER SINGH's** case (4 supra), the Supreme Court held as under:

"9. We have heard learned counsel for the parties at length. From a perusal of the entire correspondence placed on record we are fully convinced that there was no fault on the part of the appellant and he was insisting even before the execution of the agreement dated May 26, 1977 that the quarry of Yamuna sand be handed over after obtaining clearance from the Flood Control Department as the entire

quarrying area lay within the protected area as is borne out from Annexure I dated November 19, 1976. The appellant under the pain of forfeiture of his security amount as well as the first installment as contained in Rule 33 was left with no other option than to execute the deed in Form 'L' within one month from the date of communication of acceptance of bid. It is pertinent to note that soon after the acceptance of the bid in favour of the appellant, he was repeatedly making a request to the respondents to hand over possession of the area and to grant him no objection certificate from Executive Engineer (Flood and Irrigation). Copy of letter Annexure V dated August 8, 1977 written by the Director of Industries to the appellant itself makes a mention in the following terms:

"With reference to your letter dated July 8, 1977 on the above subject I have to inform you that the 'Dikshit Award' is yet to be implemented and at present the whole of the revenue estate of Basantpur falls within Haryana State. Under the authority of the contract you can extract the sand after getting permission from the Executive Engineer, Flood Division, Faridabad. You are, therefore, liable to pay the contract money from May 27, 1977 the date of commencement of contract agreement."

The contents of the above letter clearly go to show that the appellant was authorised to extract the sand after getting permission from the Executive Engineer Flood Division, Faridabad. Annexure VI dated January 28, 1978/February 6, 1978 written to Senior District Industries Officer also goes to show that a joint inspection was made on the spot and the appellant was given to understand that no mining operation could be permitted within the area of revenue estate of Basantpur because of various flood control preventive measures undertaken by the Flood Control

Department unless no objection certificate and possession was delivered by the Flood Control Department. The appellant had clearly mentioned in the aforesaid letter that he would inform regarding the results of his efforts in obtaining no objection certificate. Thereafter vide Annexure VII dated January 28, 1978/February 6, 1978, he submitted an application to the Executive Engineer (Flood and Irrigation) for granting no objection certificate for undertaking the quarrying work within the river bed of Jamuna flowing in the revenue estate of Basantpur. A copy of the aforesaid letter was even sent to the Chief Minister in which the difficulty was pointed out even for future and it was suggested that in order to avoid all these complications it was desirable that a prior consultation was done between the Department of Industries and Flood Control Department and only those areas should be auctioned which did not affect the flood control preventive measures. It is important to note that the Executive Engineer vide Annexure VIII dated February 15, 1978 did not grant no objection certificate but simply directed the appellant to remain in touch with the Industries Department in this connection.

10. All the above correspondence unmistakably goes to show that the appellant was driven from pillar to post but was not given no objection from the Flood Control Department nor it was made feasible for him to excavate or take out sand from any area of the village. The appellant has not been able to take out or excavate a single particle of sand from the leased out area and the difficulty in this regard was pointed out not only after the execution of the agreement but even prior to such execution. In facts and circumstances of the case, there was no fault on the part of the appellant and his bona fides are evident inasmuch as he had deposited a sum of Rs 47,750 even before the execution of the agreement and was always ready and

willing to perform his part of the contract, but the Flood Control Department was not giving clearance and as such the performance of the contract itself was made inexecutable by the respondent. Clause 26 of the agreement as well as Rule 61 of the Rules do not apply in the present case. There is no question of payment of any compensation to start quarrying operation in the present case. The minor mineral i.e. sand was to be lifted from the surface itself and it was admittedly the property of the government. We do not find any force in the arguments of the learned counsel for the respondents that the appellant was benefited in not starting the excavation as the prices of sand were going high. The above inference is based on mere conjecture and is not supported by any material nor such plea has been taken in the counter filed by the respondents. We are unable to appreciate as to how the appellant was at all benefited in not excavating even a single particle of sand even though he had already deposited a substantial amount of Rs 47,750 with the respondents."

In **NATIONAL SAMPLE SURVEY ORGANISATION's** case (5 supra), the Supreme Court held as under:

"11. The appellant contends that the writ petition was not maintainable, as the lease agreement contained an arbitration clause for settlement of disputes. It also contends that the landlord was entitled to increase in rent only in terms of the provisions of the West Bengal Premises Tenancy Act, 1956 and not otherwise. It is further contended that the reassessment by the Hiring Committee was only a recommendation and as the increase recommended by the Hiring Committee was arbitrary and excessive, it was not bound to accept the same. Lastly it is pointed out that it had already vacated the premises on 25-6-1992 and the tenancy till that date was regulated by lease

agreements executed on 11-4-1989, 10-5-1990 and 29-4-1991 which stipulated a monthly rent of Rs 74,645, and therefore it was not liable to pay any increased rent.

...

13. The appellant submits that the parties had entered into three lease agreements dated 11-4-1989, 10-5-1990 and 29-4-1991 in regard to the periods 1-4-1989 to 31-3-1990, 1-4-1990 to 31-3-1991 and 1-4-1991 to 31-3-1992 and all the three agreements contained an arbitration clause (Clause 17) providing that any dispute or difference arising between the parties, concerning the subject-matter of the lease agreements or any covenant, clause or thing contained therein or otherwise arising out of the said leases, shall be referred to an arbitrator to be appointed by the Government of India and the decision of such arbitrator shall be conclusive and binding on the parties hereto. Having regard to the said provision for arbitration, the appellant contends that the remedy of the respondent landlord, if it wanted any increase in rent, was to seek reference to arbitration and the writ petition was misconceived and not maintainable.

14. A careful reading of the arbitration clause in the lease agreements discloses that what is referable to arbitration, is any dispute or difference concerning the subject-matter of the said three lease agreements or any clauses thereof or any matter arising out of the said lease agreements. But the writ petition was not in respect of any of the said three lease agreements or any term thereof.

...

16. The relief sought in the writ petition thus did not relate to, nor arise from the contract of lease (the three lease agreements containing the arbitration agreement) but allegedly arose out of the OM dated 13-6-1985 and related

official memoranda issued by the Government of India. The subject-matter of those official memoranda was not subject to any provision for arbitration. The arbitration clauses in the lease agreements dated 11-4-1989, 10-5-1990 and 29-4-1991, therefore, did not cover or govern the issue raised in the writ petition. Therefore the arbitration clause in the three lease agreements would not come in the way of the writ petition being entertained."

In **HARBANSLAL SAHNIA's** case (6 supra), the Supreme Court held as under:

5. It is submitted by Shri P.P. Malhotra, the learned Senior Counsel for the appellants that the dealership has been terminated on irrelevant and non-existent grounds and, therefore, the order of termination is liable to be set aside. The Government of Uttar Pradesh has issued directions to all the District Magistrates of the State in the matter of taking of samples and carrying out tests. There are two government orders issued, namely, No. 1459/29-7-97-731-PP dated 25-4-1997 and No. 2722/29-7-2000-PP/2000. The orders state inter alia that the strength/frictions of petrol and diesel change after ten days and therefore a time-limit of ten days is fixed for testing of such products. It is also emphasized that in the interest of natural justice, the inspecting officials should test the sample for quality and density at the retail outlet itself in the presence of the dealer with necessary equipments such as filter paper, hydrometer, thermometer, jar and the conversion table which are available at the retail outlets and record density thereat only in the presence of the dealer. These government orders were violated in respect of the sample taken on 11-2-2000. Firstly, the test was not carried out at the retail outlet itself and, secondly, the time gap between the sample taken and the lab test carried out is of about a month which is capable

of causing marginal variation as detected. The learned Senior Counsel for the appellants invited attention of the Court to an order dated 24-10-2002 passed by the Commissioner, Nainital in an appeal preferred against the suspension of the petitioners' licence which too was founded on the test report of the sample taken on 11-2-2000. Impressed by non-compliance with the instructions contained in the government orders and the delay in carrying out the lab tests, also keeping in view the previous performance of the petitioners, the learned Commissioner has allowed the appeal and set aside the suspension as also the fine imposed on the petitioners. The learned counsel is right in submitting that in view of the abovesaid facts, the failure of the sample taken from the appellants' outlet on 11-2-2000 becomes an irrelevant and non-existent fact which could not have been relied on by the respondent Corporation for cancelling the appellants' licence.

...

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] .) The present case attracts applicability of the first two

contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

9. Learned senior counsel for the respondents relied upon the following judgments:

KERALA STATE ELECTRICITY BOARD v. KURIEN E. KALATHIL⁷; HYDERABAD URBAN DEVELOPMENT AUTHORITY v. M/S. IBC KNOWLEDGE PARK PVT. LTD.⁸ and BHARAT COOKING COAL LIMITED v. AMR DEV PRABHA⁹

10. The Supreme Court in **KURIEN E. KALATHIL's** case (7 supra) held as under:

"11. ... The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The

⁷ (2000) 6 SCC 293

⁸ 2013 (2) ALT 463 (DB)

⁹ (2020) 16 SCC 759

disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

In **M/S. IBC KNOWLEDGE PARK PVT. LTD.'s** case

(8 supra), this Court held as under:

"35. Before we consider the issue involved herein let us have a brief analysis of the concept of judicial review of contractual obligations arising out of public law and private law and the principles laid down by the Apex Court in various decisions.

It is settled position of law that the scope of judicial review of contractual obligations in the realm of private law under Article 226 of the Constitution is very limited. In the area of exercise of contractual powers by governmental authorities, the function of the courts is to prevent arbitrariness and favouritism and to ensure that the power is exercised in public interest and not for a collateral purpose. After awarding of the contract, it is the duty of the parties to fulfil the contractual obligations. Even when the courts had veered round to the view that the award of a contract by the government and its agencies would be amenable to the writ jurisdiction, to some extent, they still maintained the position that the question of breach of a contract was one which fell primarily within the area of private law under the Contract Act and that the remedy therefor lay in a Civil Court and not under the writ

jurisdiction of the High Courts under Article 226. The view was held for long that a writ petition would not be an appropriate remedy for imposing contractual obligations on the government. (See *State of Bihar V. Jain Plastics and Chemicals Ltd.* [AIR 2002 SC 206].

75. The allegations whether there was concealment of facts as to title or pendency of writ petitions on the part of the respondents or there was misrepresentation are factors which have to be established in a properly instituted suit before the Civil Court. This Court, in exercise of the power of judicial review cannot enquire the same. If the petitioners strongly believe that they are justified in withholding the balance sale consideration on account of defective title of the State to the property or that the respondents have not acted fairly or there was misrepresentation or fraud or inducement as defined under the provisions of the Indian Contract Act, they have to initiate proceedings in proper forum for refund of the amounts by adducing evidence, but not in a writ proceeding."

In **BHARAT COOKING COAL LIMITED's** case (9 supra, the Supreme Court held as under:

"30. But merely because the accusations made are against the State or its instrumentalities does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the relief prayed for. Thus, although every wrong has a remedy, depending upon the nature of the wrong there would be different forums for redress.

31. In cases where a constitutional right is infringed, writs would ordinarily be the appropriate remedy. In tender matters, such can be either when a party seeks to hold the State to its duty of treating all persons equally or prohibit it from acting arbitrarily; or when executive actions or legislative instruments are challenged for being in contravention to the freedom of carrying on trade and commerce. However, writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty. Hence, the persons seeking writ relief must also actively satisfy the Court that the right it is seeking is one in public law, and not merely contractual. In doing so, a balance is maintained between the need for commercial freedom and the very real possibility of collusion, illegality and squandering of public resources."

11. It has been held in a catena of decisions and also in the decisions cited supra that the Court while exercising writ jurisdiction under Article 226 of the Constitution of India can entertain writ petitions even in contractual matters. However, there are self-imposed restrictions on the High Court in entertaining the writ petitions. While granting relief in such matters, the High Court has to exercise discretion where there is demonstrable arbitrariness and there are factors like violation of principles of natural justice, lack of transparency etc. Even though the High Court has jurisdiction to enter into the disputed questions of facts, the same should not involve detailed scrutiny of documents. Ordinarily, it is not for the writ Court to examine the terms and conditions of the contract and to draw findings/conclusions regarding default committed by the

parties. Normally, such process is within the realm of civil law jurisdiction. There are allegations and counter allegations made by the petitioner and the respondent authorities regarding non-performance of the contract.

12. The alleged non-performance of the contract, the manner in which performance of the petitioner was affected due to non-obtaining of controlled blasting permission from the Directorate General of Mines Safety, the availability of alternate sites even in the absence of controlled blasting permission (which was obtained later on 05.08.2021), the terms of the contract being unconscionable, the impossibility in performance of the contract and foreclosure of the contract, in the considered opinion of the Court are not within the realm of writ jurisdiction. There are complex questions of fact involved in the instant case, which require detailed analysis and interpretation of the terms of the contract for granting or not granting relief to the petitioner. The subject contract is not a statutory contract. The enforceability of the contract and the workability of the contract require not only documentary evidence but also oral evidence apart from inspection of site and recording technical/expert evidence. As per clause 1.14 of the order dated 13.05.2019 if the dispute is not resolved at three levels i.e. at the area level/mine level/management level, the parties have to approach civil Court, for redressal of their

grievance. In addition to that, it is submitted by the learned senior counsel for the respondent that new contractor was appointed and the left over work of the petitioner was recommenced. The petitioner, admittedly, has stopped the work at the project site. In the above circumstances, there are no special or compelling circumstances for the petitioner to approach this Court for foreclosing the contract, which, ordinarily, has to be redressed before a civil Court.

13. In view of the above observations, this Court does not find any merit in the writ petition and it is accordingly dismissed. However, taking note of the fact that there was an interim order operating from 29.04.2022., in the considered opinion of this Court, the said interim order shall continue for a period of thirty (30) days from the date of receipt of a cop of this order. The petitioner is given liberty to approach the civil Court by filing a suit. The petitioner may also seek interim relief pending disposal of the main suit. In such event, the concerned civil Court shall decide the suit and the interlocutory application on merits without being influenced by any of the observations made in this writ petition.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Sd/- N. RAJ GOPAL
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To

1. One CC to M/s.A.DEEPTHI, Advocate [OPUC]
2. One CC to Sri M. Arjun, SC for Singareni Collieries Limited (OPUC)
3. Two CD Copies
4. One spare copy

S.A.

HIGH COURT

BVR,J

DATED:13/09/2022



ORDER

WP.No.22039 of 2021

**DISMISSING THE W.P
WITHOUT COSTS.**

5
[Signature]
19/09/2022