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

WRIT PETITION NO.7060 OF 2022

B. S. Ispat Limited, A company incorporated under the Companies Act, 1956 having its registered office and principal place of business at Khasra No.97, 101, 190, Village-Salori Yensa, Post-Chinora, Tq. Warora, Dist. Chandrapur through its authorized person Mr. Sagar S/o Ramchandra Kasangottuwar, aged about 40 years, Vice President (Finance & Accounts), R/o Plot No. 125, Flat No. 301, Telecom Nagar, Nagpur. .... **PETITIONER**

...V E R S U S...

1. The Union of India, through its Secretary, Ministry of Coal, Government of India, New Delhi.

2. The Nominated Authority, Office of Ministry of Coal, Government of India, New Delhi. .... **RESPONDENTS**

Mr. M. G. Bhangde, Senior Counsel with Mr. R. M. Bhangde, Counsel for Petitioner.
Mr. Nandesh Deshpande, Deputy Solicitor General of India for Respondents 1 & 2.

CORAM: ROHIT B. DEO AND Y. G. KHOBRAGADE, JJ.
DATE: 10th FEBRUARY, 2023.

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

The petitioner is a public limited company incorporated under the provisions of the Companies Act, 1956.

2. The petitioner emerged as the successful bidder in the tender process under the provisions of the Coal Mines (Special Provisions) Act, 2015 and the Coal Mines (Special Provisions) Rules, 2014. Coal Mine Development and Production Agreement (CMDPA) dated 17.08.2022 was executed between the petitioner and respondent 2 – the nominated authority. The challenge in the petition is to the termination of the CMDPA vide letter dated 02.11.2022 issued by respondent 2.

3. Facts lie in narrow compass and are broadly undisputed.

4. In accordance with the terms and conditions of the CMDPA the petitioner furnished bank guarantee (BG) dated 13.12.2021 issued by Axis Bank Ltd., Nagpur in the sum of Rs.4,32,48,666.00 (Four Crores Thirty Two Lakhs Forty Eight Thousand Six Hundred Sixty Six only) valid from 13.12.2021 to 14.07.2022, which BG was subsequently amended on 14.06.2022 and 07.09.2022 as to extend the validity from 14.07.2022 to 14.09.2022 and 14.09.2022 to 14.12.2022 respectively.

5. In terms of the CMDPA the petitioner paid an amount of Rs.5,41,93,508.56 (Five Crores Forty One Lakhs Ninety Three Thousand Five Hundred Eight and Fifty Six Paise only) in the designated bank account on 21.09.2022, and an amount of Rs.5,40,60,832.50 (Five Crores Forty Lakhs Sixty Thousand Eight Hundred Thirty Two and Fifty Paise only)as the first installment of the upfront charges, on even date.

6. The petitioner was required to submit BG in the sum of Rs.49,10,12,653.41 (Forty Nine Crores Ten Lakhs Twelve Thousand Six Hundred Fifty Three and Forty One Paise only) as performance security within 40 days from the date of execution of the CMDPA. The petitioner requested extension of one month for submission of the performance BG, vide letter dated 25.09.2022, which extension was granted by the respondent 1 vide letter dated 12.10.2022.

7. Due to certain constraints, *inter alia* festival holidays, the petitioner found it difficult to submit the performance BG on or before the extended period which was to end on 25.10.2022, and the petitioner addressed letter dated 19.10.2022, seeking further extension of time of 30 days to submit the performance

BG, which letter went unheeded.

8. The petitioner contends that out of the blue an e-mail was received at 10:44 a.m. on 03.11.2022 along with which attached was the termination letter dated 02.11.2022. The petitioner was informed that as a consequence of the termination of the CMDPA, the first installment of upfront amount and fixed cost deposited by the petitioner and the BG in the sum of Rs.4,32,48,666.00 (Five Crores Thirty Two Lakhs Forty Eight Thousand Six Hundred Sixty Six only) stood forfeited.

9. The petitioner addressed representation dated 04.11.2022 *inter alia* pointing out that the respondent 2 nominated authority did not issue the 15 day notice as mandated by clause 26.3.2 of the CMDPA and that the request for extension of time was not addressed, either way.

10. The representation did not evoke any response.

11. In response to the notice issued, affidavit in response dated 24.11.2022 is filed on behalf of the respondents.

12. Respondents do not refute the assertion that the petitioner did apply for further extension of 30 days to submit the performance BG, which request was not decided either way.

13. Responding to the contention of the petitioner that the 15 days notice envisaged under clause 26.3.2 of the CMDPA was not given, respondents assert that the termination letter dated 02.11.2022 is made effective from the 15th business day, which is sufficient compliance of the said condition. The respondents assert that since the petitioner was extended the indulgence of extension of 30 days, the petitioner was not justified in requesting for a second extension of 30 days to submit the performance BG.

14. Respondents heavily rely on the decision of the Division Bench of the High Court of Delhi in Writ Petition 7057/2022 and contend that in similar fact situation the challenge to the termination of the CMDPA is rejected by the High Court, and the Special Leave Petition (SLP) preferred challenging the decision of the High Court is rejected in limine.

15. The petitioner has filed an affidavit in rejoinder dated 08.12.2022. Dealing with the averments in affidavit in response in

paragraph 18, petitioners contend that the construction of clause 26.3.2 and clause 26.3.3 is patently erroneous. The thrust of the affidavit in rejoinder is that the words “may elect” clearly indicates that termination is not the only option available, and that the authority is obligated to exercise the discretion to elect one of the two options, which is termination or allowing the extension of time to comply with the condition, judiciously.

16. The petitioner asserts that there cannot be forfeiture of the payment made till the 15th business days written notice to terminate the CMDPA is served as envisaged. The petitioner emphasizes that clause 28.11 of the CMDPA mandates that the notice of termination shall be delivered by registered post or fax, and that the petitioner did not receive the notice either by registered post or fax.

17. The petitioner asserts that even in contractual matters, the State is obligated to act fairly and that the termination of the CMDPA whilst the request for extension was pending and undecided is manifestly arbitrary.

18. In the affidavit in rejoinder the petitioner

distinguishes the decision of the High Court of Delhi thus:

> *i. The petitioner in the case before the Hon'ble Delhi High Court had not paid the upfront amount of Rs.2,25,54,400/-.*
>
> *ii. The petitioner in the case before the Hon'ble Delhi High Court had not paid the fixed amount of Rs.2,59,04,776/-.*
>
> *iia) In the instant case, the petitioner has paid Upfront Charges of Rs.5,40,60,832.50/- as well as Fixed Charges of Rs.5,41,93,508.56/-, both on 21.09.2022 before the due date i.e. 26.09.2022.*
>
> *iii. In the case before the Hon'ble Delhi High Court, the time to furnish the Bank Guarantee towards Performance Security had expired on 02.12.2021 and the Termination Letter was issued after five months (approximately) on 21.4.2022. In the meantime, the extension of time by period of two months i.e., upto 01.02.2021 which was applied for was already over. .....*
>
> *iiia) In the instant case, the time to furnish Bank Guarantee expired on 25.10.2022 and the Letter of Termination is issued within a week on 02.11.2022. Thus, the respondent no. 2 has practiced discrimination in as much as the second application of the petitioner before the Hon'ble Delhi High Court for grant of extension of time to furnish Bank Guarantee by two months stood granted whereas the application of the petitioner for the same purpose seeking one month extension was not even considered and now plea of its implied rejection is raised.*
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> *iv. In the case before the Hon'ble Delhi High*

Court, Bank Guarantee as Performance Security was not furnished by the petitioner even till the matter was heard therein. However, in the present case, the petitioner has already furnished Bank Guarantee in the sum of Rs.49,10,12,654.00/- on 14.11.2022 before the expiry of the 15-business days written notice.

v. *.....*

vi. *Only one ground was raised before the Hon'ble Delhi High Court, that it was necessary to give Show Cause Notice before the Termination of the CMDPA. However, the said point is not urged in the present case. The instant case is based upon total lack of fairness and reasonableness on the part of the respondents in issuing the impugned letter of termination during pendency of the application of the petitioner for extension of time.*

19. We have heard the learned Senior Counsel Mr. M. G. Bhangde for the petitioner and the learned Deputy Solicitor General Mr. Nandesh Deshpande for the respondents.

20. Before we consider the submissions canvassed, we find it apposite to extract the order dated 14.11.2022, pursuant to which the petitioner furnished the performance security BG vide letter dated 14.11.2022.

"Heard Mr. M.G. Bhangde, learned Senior Advocate. Perused the termination letter.

> *Noted the requirements of clause 26.3.2 of the agreement in question requiring any of the parties to give 15 days notice before terminating the agreement. We have also considered the submission that the request made on 19.10.2022 seeking extension of time to submit performance security is still pending with the respondents.*
>
> *2. Considering the above noted circumstances of the case, which require consideration by this Court, we issue notice for final disposal at admission stage to the respondents and by way of interim directions, permit the petitioner to submit the performance security / bank guarantee to respondent No.2, subject to the final result of this petition.*
>
> *3. Mr. Sahil Mate, Advocate h/f Mr. Nandesh Deshpande, learned Deputy Solicitor General of India waives notice for respondent Nos.1 and 2.*
>
> *4. Stand over to 28.11.2022."*

21. Mr. M. G. Bhangde would submit that the CMDPA is executed in accordance with Rule 13 (5) of the Coal Mines (Special Provisions) Rules, 2014 (Rules) and partakes the character of statutory contract. Mr. M. G. Bhangde would further submit, that even it is assumed *arguendo*, that CMDPA is not statutory contract, the State is obligated to act fairly even in matters of commercial contracts. Mr. M. G. Bhangde would submit that the termination of the CMDPA is manifestly arbitrary in as much as (i) the authority issued the termination letter while the

request for extension of time to furnish the performance BG was pending (ii) the authority clearly misconstrued the terms and conditions of the CMDPA and failed to appreciate that implicit in the contractual scheme was that the termination was not the only option available (iii) the termination of the CMDPA falls foul of the contractually prescribed safeguards. (iv) in any event, the forfeiture of the fixed amount of Rs.5,41,93,508.00 (Five Crores Forty One Lakhs Ninety Three Thousand Five Hundred Eight only), the first installment of the upfront charges of Rs.5,40,60,832.00 (Five Crores Forty Lakhs Sixty Thousand Eight Hundred Thirty Two only) and the bank security in the form of BG in the sum of Rs.4,32,48,666.00 (Four Crores Thirty Two Lakhs Forty Eight Thousand Six Hundred Sixty Six only) is arbitrary and otherwise illegal in as much as the respondents did not suffer any loss or damages nor did the petitioner withdraw its bid or committed default during the period of the bid validity as specified in the tender document.

22. Mr. M. G. Bhangde would invite our attention to certain decisions to buttress the submission that even in contractual matters the State is obligated to act fairly, and any other view may be destructive to the maintenance of the rule of

law. We shall consider the decisions on which reliance is placed by Mr. M. G. Bhangde, at a later stage in the judgment and to the extent necessary.

23. Mr. Nandesh Deshpande would rely on the decisions in (i) ***Industrial Promotion and Investment Corporation of Orissa Limited v. New India Assurance Company Limited and another (2016) 15 SCC 315***, (ii) ***United India Insurance Company Limited v. Orient Treasures Private Limited (2016) 3 SCC 49***, (iii) ***Joshi Technologies International Inc. v. Union of India and others (2015) 7 SCC 728*** (iv) **Export Credit Guarantee Corporation of India Limited v. Garg Sons International (2014) 1 SCC 686** and (v) ***Food Corporation of India & Ors. V. Abhijit Paul in Civil Appeal 8572-8573/2022 arising out of SLP (C) 16009-16010/2019*** to buttress the submission that in as much as the petitioner did not submit the performance BG within the extended time, the termination of the CMDPA which is in consonance with the contract is not vulnerable or susceptible to judicial review. Mr. Nandesh Deshpande would submit that in writ jurisdiction the constitutional court must be slow to interfere with the decisions in the realm of contract in the absence of demonstrable arbitrariness. Mr. Nandesh Deshpande would submit that the respondents were

under no obligation or duty to grant further extension of 30 days to submit the performance BG, and that a decision which is taken in consonance with the contractual terms is ordinarily immune from judicial review.

24. Mr. M. G. Bhangde would rely on the decision in ***India Thermal Power Ltd. v. State of M.P. and others (2000) 3 SCC 379*** in support of the submission that since the CMDPA is executed in pursuance of statutory provisions, the CMDPA is a statutory contract. ***Kisan Sahkari Chini Mills Limited and others v. Vardan Linkers and others (2008) 12 SCC 500*** is pressed in service to emphasize that the statutory contract and the termination thereof involves a public law element, and that judicial review of the administrative action is not only permissible, is expected.

25. ***Hindustan Petroleum Corporation Limited and others v. Super Highway Services and another (2010) 3 SCC 321*** is cited in support of the submission that the cancellation of the CMDPA, without hearing the petitioner, and without serving the notice in terms of the CMDPA, is arbitrary, illegal and in violation of the principles of natural justice. ***Surya Constructions v. State of Uttar Pradesh and others (2019) 16 SCC 794***, is cited to emphasize that

where the State acts arbitrarily, even in the realm of contract the constitutional court can interfere under Article 226 of the Constitution of India. Mr. M. G. Bhangde has heavily relied on the articulation of the Hon'ble Supreme Court in ***Indsil Hydro Power and Manganese Limited v. State of Kerala and others (2020) 16 SCC 276*** and in particular on certain observations which we are extracting below:

> *"33. While assessing the merits of the rival contentions, this Court must be cognizant of the fact that the invocation of the power of judicial review under Article 226 of the Constitution of India was in the context of a contract which was entered into between the appellant and KSEB in pursuance of a policy initiative of the Government of Kerala. Evidently, in announcing the policy initiative on 7-12-1990, the State Government intended to encourage the setting up of hydel power projects by private agencies and hence, a slew of concessions came to be provided. The agreement that was entered into between the appellant and KSEB is undoubtedly a matter in the contractual arena. It is now a settled principle of law that the exercise of writ jurisdiction under Article 226 is not excluded in matters pertaining to contract. The States and its agencies are duty bound to act in a manner which is fair and transparent. The State and its instrumentalities cannot act arbitrarily in dealings with private parties. This must particularly be the governing principle where the State as a measure of encouraging industrialisation invites the participation of private industries to respond to the policy initiative of the State.*

> *43. The order of the State Government dated 7-2-2001 shows that there was no deliberate act or default on the part of KSEB. Indeed, it has not been seriously disputed that at the material time, there were agitations on the part of the farmers and certain other circumstances which caused delay in the construction of the transmission lines. However as significant as these reasons are, it should not lead to a situation where a private investor who has acted upon the policy of the State Government being left in the lurch as a result of supervening circumstances which have resulted in the power not being evacuated into the grid due to the non-commissioning of the transmission lines at the material time by KSEB. It is imperative that contractual obligations entered into by the State have legal sanctity. A legal regime where the sanctity of contracts is respected and commercial contracts are enforced is essential to the maintenance of the rule of law. Trade and commerce can be freely conducted in a stable legal order which provides remedies for enforcement.*

26. Relying on the decision of ***Popatrao Vyankatrao Patil v. State of Maharashtra and others (2020) 19 SCC 241***, Mr. M. G. Bhangde would submit that the respondents are expected to act as model litigant. The State must not be heard arguing that the play in the joints in the realm of contractual matters can be stretched or understood as licence to act arbitrarily.

27. ***M/s. Satav Infrastructure Pvt. Ltd. v. Union of India & Ors. 2008 SCC OnLine Pat 48*** is cited in support of the submission

that in contractual matters, while the State is bound by contractual obligations like an individual, there is an additional responsibility to frame its actions in conformity with the philosophy enshrined in Article 14 of the Constitution of India.

27. Relying on the decision in ***Kailash Nath Associates v. Delhi Development Authority and another (2015) 4 SCC 136***, Mr. M. G. Bhangde emphasizes on the enunciation that the provisions of section 74 of the Contract Act, 1872 cannot be invoked in the absence of contractual pre-estimate of the loss or damage in case of breach of contract.

28. ***Rambeer Shokeen v. State (NCT of Delhi) (2018) 4 SCC 405*** is cited to buttress the submission that since the application seeking extension of time to furnish the performance BG was not decided, recourse to the power to terminate the CMDPA was not available.

29. ***Hirday Narain v. Income-Tax Offier, Bareilly 1970 (2) SCC 355*** is cited in support of the submission that the fact that there is a power vested to consider extension of time to furnish the performance BG, creates a corresponding right to expect that the

application seeking extension shall be considered and decided either way, prior to the decision on termination of the contract. The said decision is relied also in support of the submission that the termination was not the only option available, and the enabling power to resort to termination did not obviate the need and obligation to act fairly in exercise of the enabling power. ***J. N. Chemical (Pvt.) Ltd. v. Cegat 1989 SCC OnLine Cal 488*** refers to and relies on *Hirday Narain's* case *supra.*

30. We may now consider the decisions cited by Nandesh Deshpande.

Industrial Promotion and Investment Corporation of Orissa Limited v. New India Assurance Company Limited and another (2016) 15 SCC 315 is cited in support of the submission that the Doctrine of contra proferentem, which is that the ambiguity in the contract must be resolved against the party drafting the contract, does not come into the play unless the ambiguity is demonstrated. The decision is cited presumably since in the pleadings there is a reference to the said doctrine, although that aspect has not been touched in the arguments canvassed.

31. ***United India Insurance Co. Ltd. v. Orient Treasures***

Private Limited (2016) 3 SCC 49 also considers the doctrine of contra proferentem.

32. ***Joshi Technologies International Inc v. Union of India and others (2015) 7 SCC 728*** is cited to emphasize that if the dispute is in the realm of pure contract, in contra distinction with statutory contract, the High Court ought not to interfere in writ jurisdiction. It would be necessary to briefly notice the factual matrix in which the said decision is rendered. *Joshi Technologies International Inc.* (petitioner) had entered into two contracts dated 20.02.1995 with the Union of India relating to exploration of certain oil fields on production sharing basis for Dholka and Wavel Oil fields. In the income tax returns, the petitioner claimed benefit of section 42 of the Income Tax Act, 1961 (Act) which is a special provision for deductions in the case of business for prospecting etc. for mineral oil. The allowances envisaged in section 42 of the Act are however, required to be specifically mentioned in the agreement. Initially, the benefit of deduction was extended to the petitioner, and while making the assessment for the year 2005-06 the deductions were not allowed on the premise that the agreements did not contend such provision. Aggrieved, the petitioner approached the High Court of Delhi

seeking a writ of declaration that the petitioner is entitled to the benefit of the deductions which writ petition the High Court dismissed holding that in the absence of stipulation in the agreement, the petitioner is not entitled to deductions under section 42 of the Act. The decision of the High Court is upheld by the Hon'ble Supreme Court *inter alia* holding that the contract can be amended only if the parties to the contract agree to do so, and not otherwise. The Hon'ble Supreme Court while observing that on the facts of the case, the matter was in the realm of pure contract, and that there was no statutory contract in existence, held that no mandamus could have been issued to direct the State to incorporate a clause in the contract, in the face of the specific provisions of the contract, of which the petitioner is presumed to have knowledge.

33. ***Export Credit Guarantee Corporation of India Limited v. Garg Sons International (2014) 1 SCC 686*** is again a decision which enunciates that the courts are not permitted to substitute the terms of contract under the garb of liberal construction, and that the doctrine of contra proferentem would not apply to commercial contracts which are bilateral and mutually agreed upon.

34. ***Food Corporation of India and others v. Abhijit Paul in Civil Appeal 8572-8573/2022 Arising Out of SLP (C) 16009-16010/2019*** is cited in support of the argument that every contract must be considered with reference to its object and the terms must be construed contextually and in entirety in order to decipher the intention of the parties.

35. We have given anxious consideration to the submissions canvassed by Mr. M. G. Bhangde and Mr. Nandesh Deshpande, and having done so, we are inclined to hold, for reasons spelt out hereinafter, that the petition deserves to be allowed.

36. It is irrefutable that the CMDPA is executed as mandated by Rule 13 (5) of the rules, as is the recital in the CMDPA. Sub-rule 4 of Rule 13 provides that in accordance with the provisions of the Act the successful bidder or allottee shall be required to provide a performance bank guarantee for such amount as may be specified by the Central Government or the nominated authority, and such performance bank guarantee shall be linked with the milestones for the development of the coal mine till it reaches its peak rated capacity as specified in the

approved mine plan. Sub-rule (5) mandates that the successful allottee shall enter into an agreement with the nominated authority wherein the terms and conditions of the allocation shall be specified. The statutory regime obligates the successful bidder to enter into an agreement and provides that the successful bidder shall furnish performance BG. There is no gain saying, that if a contract is entered into in exercise of an enabling power conferred by statute, every condition of the contract does not necessarily assume a statutory flavor. While conditions which are statutorily envisaged are clothed with the character of statutory conditions, the parties may as well agree on certain conditions which are not referable to the statutory regime, and such conditions may be considered as purely contractual conditions. In the present case, we have noted that it is statutorily mandated that the successful bidder shall enter into an agreement with the Central Government or the appointed authority, and the successful bidder shall furnish performance BG the nature of which is statutorily spelt out. We are inclined to hold, that at least to the extent of the conditions governing the performance BG, the CMDPA assumes the character of statutory contract with an element of public law involved.

37. *Arguendo,* even if we assume that the CMDPA has no statutory flavor, and that the termination of the CMDPA is a matter in the realm of pure commercial contract, the State is nonetheless obligated to act fairly and reasonably. We are not suggesting, even for a moment, that the scope and ambit of writ jurisdiction, while entertaining a matter within the realm of pure commercial contract, shall be of the same width and amplitude as in entertaining a matter pertaining to a statutory contract. The width, and the contours of the writ jurisdiction is undoubtedly restricted if there is no element of public law involved. Nonetheless, if the action of the State is manifestly arbitrary as would militate against the constitutional philosophy enshrined in Article 14 of the Constitution, interference in the writ jurisdiction is not only permissible, is imperative.

38. The seminal issue, however, is whether the termination of the CMDPA is arbitrary. The answer must clearly be in the affirmative. We are inclined to hold, for reasons articulated infra, that the termination and forfeiture of Rs.5,41,93,508.56 (Five Crores Forty One Lakhs Ninety Three Thousand Five Hundred Eight and Fifty Six paise only) and Rs.5,40,60,832.50 (Five Crores Forty Lakhs Sixty Thousand Eight Hundred Thirty

Two and Fifty paise only) and Rs.4,32,48,666.00 (Four Crores Thirty Two Lakhs Forty Eight Thousand Six Hundred Sixty Six only) bank guarantee is not fair and unreasonable and what is unfair and unreasonable is ordinarily arbitrary.

39. The petitioner did deposit the amount of Rs.5,41,93,508.56 (Five Crores Forty One Lakhs Ninety Three Thousand Five Hundred Eight and Fifty Six Paise only) as fixed charges and further amount of Rs.5,40,60,832.50 (Five Crores Forty Lakhs Sixty Thousand Eight Hundred Thirty Two and Fifty Paise only) as the first installment of the upfront charges. The petitioner further furnished the performance BG in the sum of Rs.4,32,48,666.00 (Four Crores Thirty Two Lakhs Forty Eight Thousand Six Hundred Sixty Six only). The petitioner did seek extension of 30 days to furnish the performance BG, which extension was granted and the petitioner was expected to furnish the performance BG on or before 25.10.2022. Before the expiry of the extended period, the petitioner sought further extension of 30 days which application was not decided and the CMDPA was terminated vide order dated 02.11.2022.

40. It is not necessary to delve deeper in the submission

of Mr. M. G. Bhangde that the order of termination of CMDPA is illegal in as much as the petitioner was not served the notice of termination by the mode specified and that the 15^{th} business days notice was not given. In our considered view, the order of termination of CMDPA is arbitrary on two counts. The first is that in the absence of any statutory impediment in considering the application for extension of 30 days to furnish the performance BG, albeit one extension was already granted to the petitioner, the least which was expected of the authority was to take a decision on the pending application, one-way or the other, and put the petitioner on notice that no further extension shall be granted and that the performance BG must be furnished immediately. The other aspect is that the drastic power of termination of CMDPA is clearly not the only option available and the authority is not precluded from condoning the delay and accepting the performance BG, in a given situation. We find considerable substance in the submission canvassed by Mr. M. G. Bhangde, that the termination of the CMDPA while keeping the application seeking extension to furnish performance BG pending, is an arbitrary exercise of the enabling power of termination, particularly since the petitioner was not put on notice much less heard, prior to the issuance of the termination letter. Having so observed, we may clarify that we are not inclined to make any positive observation on the entitlement of the petitioner to hearing prior to the decision of termination. What we are emphasizing in the factual matrix, is that the petitioner was entitled to nurture a legitimate expectation that the application seeking extension of time shall be considered, either way. While the petitioner has no right to claim an extension, the petitioner can certainly assert the right that the application be considered on its merits, either way.

41. The enabling power of termination of the CMDPA is drastic, and as is apparent from the consequences of the termination of the CMDPA, visits the party to the contract with serious consequences. It is all the more necessary, given the consequences *inter alia* forfeiture of the substantial amount deposited and the invocation of the bank guarantee in the sum of Rs.4,32,48,666.00 (Four Crores Thirty Two Lakhs Forty Eight Thousand Six Hundred Sixty Six only), that the authority is expected to consider and decide the application seeking extension of time prior to the issuance of the termination letter.

42. We may draw some support from the decision of the Division Bench of this Court in ***Babasaheb s/o Apparao Akat and***

others v. State of Maharashtra and others 2010(4) Mh.L.J. 360, albeit the said decision was rendered on the anvil of the provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (APMC Act).

43. We may notice certain provisions of the APMC Act which were considered in the said decision. Sub-section(3) and (3A) of section 14 of the APMC Act read thus:

> *(3) Except as otherwise provided in this Act, the members of a Market Committee (not being a Committee constituted for the first time) shall hold office for a period of [five years], and the members of a Committee constituted for the first time shall hold office for a period of two years:*
>
> *[Provided that, the Market Committee constituted for the first time, may be replaced by the Government and the new Committee so replaced shall hold office for the remainder of the period:]*
>
> *[[Provided further that], where the general election of members of a Committee could not be held for reasons beyond the control of the Committee before expire of the term of office of its members as aforesaid, the State Government may, by order in the Official Gazette, extend from time to time, the term of office of any such Committee, so however, that the period for which the term of office is so extended shall not exceed the period of one year in the aggregate.]*

[(3A) Where due to scarcity, draught, flood, fire or any other natural calamity or rainy season or any election programme of the State legislature or the Parliament or a local authority, coinciding with the election programme of any Market Committee or such other special reason, in the opinion of the State Government, it is not in the public interest to hold elections to any Market Committee, the State Government may, notwithstanding anything contained in this Act or in any rules, or bye-law made thereunder, or any other law for the time being in force, for the reasons to be recorded in writing, by general or special order, postpone the election of any Market Committee for a period not exceeding six months at a time which period may further be extended, so, however, that the total period shall not exceed one year in the aggregate.]

Section 15A which provides for appointment of Administrator after expiry of the normal or extended term of office of the elected committee reads thus:

[15A. Provision for appointment of Administrator after normal or extended term of office of members expires.

(1) Notwithstanding anything contained in sub-section (3) of section 15 or any other provisions of this Act, where the term of office of two years, five years, or as the case may be, the extended term of office, if any, under the proviso to sub-section (3) of section 14 [-------] of the members of any Market Committee, has expired, the

Director or any officer not below the rank of the District Deputy Registrar of Co-operative Societies, authorised by him shall, by order in writing, direct that —

(a) all members of the Committee shall, as from the date specified in the order, cease to hold and vacate their offices as members or otherwise; and

(b) [the Administrator or the Board of Administrators of not more than seven members appointed by the Director or such authorised officer shall manage the affairs of the Committee], during the period from the date specified in the order upto the day on which the first meeting of the reconstituted Committee after the election is held, where there is a quorum (hereinafter in this section referred to as "the said period"). Such election shall be held within a period of [Six months] from the date the [Administrator or the Board of Administrators] assumes office:

[Provided that, this period of [Six months] may be extended from time to time by the State Government, in exceptional circumstances, to a period not exceeding [one year] in the aggregate, by notification in the Official Gazette, for reasons, which shall be stated in the notification.

[(1A) Notwithstanding anything contained in clause (b) of sub-section (1), as it stood before the commencement of the Maharashtra Agricultural Produce Marketing (Regulation) (Amendment and Validation) Act, 1985, where the Administrator has been to manage the

affairs of any Committee but election to such Committee has not been held within a period of one year as required under clause (b) of sub-section (1), the period of holding election to such Committee shall be extended and shall be deemed always to have been extended upto and inclusive of, the 31st day of March 1986.]

(2) During the said period, all the powers and duties of the Committee and its various authorities under this Act and the rules and bye-laws made thereunder or any other law for the time being in force shall be exercised and performed by [the Administrator or the Board of Administrators].

(3) The [Administrator or the Board of Administrators] may delegate any of his powers and duties to any officer for the time being serving under him or under the Committee.

(4) The [Administrator or the members of the Board of Administrators] shall receive such remuneration from the Market Fund as the Director or authorised officer may, from time to time, by general or special order, determine.]]

In *Babasaheb Akat,* which decision is relied on relatively recent decision in *Bhausaheb Pandurang Jadav v. State of Maharashtra,* the Division Bench noticed that the proposal for extension of the term of the elected managing committee was pending, and instead of first considering the proposal seeking extension, straightway the Administrator was appointed.

The Division Bench considered the issue thus:

> *7. In the present case, however, we have noticed that respondent No. 7 submitted proposal for extension of the term highlighting the fact that the elections could not be held before the expiry of the term for no fault of the present Committee and for that reason, it was just and proper to extend the term which can be extended upto a period of one year as provided by the second proviso under sub-section (3) of section 14 of the Act. The appropriate authority instead of first considering the said proposals, after lapse of about five months from the submission of the proposals proceeded to straightway appoint Administrator to take over the affairs of the respondent No. 7 Committee. Section 14 of the Act is of some relevance for considering the controversy at hand. We are concerned with Section 14(3) which provides that except as otherwise provided in the Act, the members of the Market Committee shall hold office for a period of five years as is applicable to the present case. Second proviso under the said sub-section, however, stipulates that where the general election of members of a Committee could not be held "for the reasons beyond the control of the Committee" before expiry of the term of office of its members, the State Government may, by order in the official Gazette extend the term of the office of any such Committee which can be upto a period of one year in the aggregate. This is obviously an enabling provision. It bestows power in the respondent No. 1 to extend the term of the Committee in specified situation. That power is coupled with duty to act in time and decide justly and reasonably. If the State Government were to consider the proposals submitted by the petitioners, to respondent Nos.1 and 2, the period of present Committee could be extended maximum upto 10th July 2010. However, the*

proposals were kept pending by the appropriate authority for reasons best known to it. Instead, the impugned orders came to be issued to appoint the Administrator to take over the affairs of respondent No. 7 Committee. On conjoint and harmonious reading of Second proviso under Section 14(3) and Section 15 of the Act, the appropriate authority had at least two different options to deal with the present situation. For, it is not the case of the authority or for that matter the intervenor that the present members of the Committee were responsible for not holding the election of the Committee before the expiry of their term. On the other hand, the material on record would go to show that respondent No. 7 commenced the exercise of conducting the election well in advance, as back as on 6-1-2009. The fact that the election could not be held due to intervening Parliamentary and Assembly elections, is also not in dispute. There is nothing on record or brought to our notice by the official respondents or the Intervenor, which would remotely suggest that there was any allegation of mal-administration or mis-feasance committed by the members of the present Committee. In such a situation, ordinarily, the appropriate authority ought to favourably consider the proposal for extending the term of the present Committee by invoking the second proviso under Section 14(3) of the Act. Assuming that the appropriate authority was inclined to appoint the Administrator, it was open to it to appoint the present members as the Board of Administrators, instead of appointing the respondent No. 6 as the sole Administrator. In other words, more than one option was available to the appropriate authority in the fact situation of the present case. Obviously, none of these options have been considered and the appropriate authority straightway proceeded to appoint the sole Administrator to look after the affairs of the Committee. That cannot be countenanced more particularly when no reason

> *is stated in the impugned order or for that matter any contemporaneous record to justify one of the particular mode amongst the available modes.*

44. The observation in *Babasaheb Akat*, while rendered on the anvil of the statutory provisions of the APMC Act, are of relevance to the extent the appointment of the Administrator without first considering the application seeking extension of the term of the elected committee, is held arbitrary and further, the availability of more than one option is emphasized.

45. In the factual matrix, we are inclined to hold that the silence and inaction of the authority as regards the application seeking extension of time to furnish the performance BG, and exercising the power of termination of the CMDPA without first deciding on the application seeking extension, which was undisputedly preferred prior to the expiry of the extended period, is arbitrary and violative of the Article 14 of the Constitution of India. We are further of the view, that even in the realm of pure contractual matters, the action of the State must be enthused with fairness and reasonableness and power of termination of contract must not be exercised in a routine or mechanical manner. It appears to us that the power to terminate the CMDPA, which

power is undoubtedly available, ought not to have been exercised without exploring the alternate options *inter alia* of considering the application seeking extension of time, and at any rate without putting the petitioner on notice that the extension shall not be considered and the performance BG must be furnished without any further loss of time.

46. We have extracted the order dated 14.11.2022. The petitioner has furnished the performance bank guarantee pursuant to the said order immediately on 14.11.2022. The termination letter dated 02.11.2022, even according to the respondents, was to come into effect on 21.11.2022. The performance BG is submitted, albeit in view of the order dated 14.11.2022 which records that the submission shall be subject to the final decision in the petition, prior to the coming into effect of the termination. These facts are of some relevance. While ordinarily, despite holding the termination of the CMDPA arbitrary, we may have directed the respondents to take an appropriate decision, in the factual matrix we are inclined to quash the termination of the CMDPA and make the interim arrangement absolute.

47. We have given due consideration to the facts in the back-drop of which the High Court of Delhi rendered the decision which is heavily relied on by the respondents. We are inclined to agree with Mr. M. G. Bhangde that the facts in the said decision are clearly distinguishable, for reasons spelt out by the petitioner and which we have extracted in para 18 *supra,* which appeal to us.

50. In any event, as is rightly submitted by Mr. M. G. Bhangde the dismissal of the SLP by the Hon'ble Supreme Court is not necessarily an imprimatur of the reasoning of the High Court of Delhi.

51. In the light of the discussion *supra*, we quash and set aside the termination letter dated 02.11.2022 and allow the petition in terms of prayer clause (1) which read thus:

> 1) Quash and set aside termination letter dated 02.11.2022 issued by the Nominated Authority, respondent 2 and direct the respondent to reverse all actions taken pursuant thereof and accept bank guarantee towards performance

security to be furnished by the petitioner.

(Y. G. KHOBRAGADE, J.) **(ROHIT B. DEO, J.)**

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