

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 18.09.2024
DELIVERED ON: 27.09.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT NO. 719 OF 2024

WITH

I.A. NO. CAN 1 OF 2024

+

I.A. NO. CAN 2 OF 2024

+

I.A. NO. CAN 3 OF 2024

+

I.A. NO. CAN 4 OF 2024

EASTERN COALFIELDS LIMITED AND ANOTHER

VERSUS

M/S. UCC-RLA-STA (JV) AND OTHERS

Appearance:-

Mr. Jishnu Chowdhury, Adv.

Mr. Syed Nurul Arefin, Adv.

Mr. Rahul Singh, Adv.

Mr. Syed Moyeenul Arefin

.....For the Appellants

Mr. Subhabrata Datta, Adv.

Mr. Subhojit Seal, Adv.

Mr. Aranya Saha, Adv.

.....For the Respondent Nos 1 & 2

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra court appeal by the respondents in WPA No. 26622 of 2023 is directed against the judgment and order dated 13.03.2024 by which the writ petition filed by the respondent herein was allowed in part directing the appellants to pay the writ petitioners the amount of Rs. 2,96,94,618/- within April 12, 2024 together with interest at 8% per annum on half of the amount that is on Rs. 1,41,47,309/- from November 30, 2022 till the date of payment and interest at the same rate to be paid on the balance amount of Rs. 1,48,47,309/- from May 30, 2023 till date of payment. In so far as the rest of the claim of the writ petitioners with regard to the contract in question, including final bills and the purported additional performance security as well as other components, the writ petitioners were granted liberty to make such claim by instituting a civil suit before the competent board having jurisdiction and if so instituted the same to be decided on its own merits in accordance with law by the said court.
2. The appellants who are the respondents in the writ petition are aggrieved by such direction and have preferred the present appeal. The facts leading to the filing of the writ petition could be briefly stated as hereunder:-
3. The first writ petitioner is a Joint Venture Partnership constituted under the relevant provision of the Indian Partnership Act, 1932 and the second writ petitioner is the constituted attorney of the Joint Venture by virtue of a power of attorney executed in his favour. The writ petitioner participated in a e-tender called for by the appellants as published by a Notice Inviting Tender (NIT) dated November 25, 2014 for a estimated

contract value of Rs. 190,47,08,700.00/- ps. The appellant issued a letter of approval to the first writ petitioner dated May 04, 2015 in respect of the awarded work and work order and subsequently the work order dated June 26, 2015 was issued. The writ petitioner's would state that during the execution of the project the appellant's required the Joint Venture to submit a modified offer for the project and accordingly the same was made by offer dated March 10, 2019 which was duly approved by the appellants by issuing a supplementary work order dated June 21, 2019.

4. The writ petitioners submitted an Additional Performance Security/Security Deposit (TSD) of an amount of Rs. 3,03,600/-. The writ petitioners would state that they had successfully completed the project to the satisfaction of the appellants. By letter dated May 31, 2022, the Joint Venture had requested the appellant's for final measurement of the contract as per NIT. Subsequently, a supplementary work order dated June 21, 2019 was issued for an additional quantity of OB and coal. The writ petitioner would state that they completed the entire work awarded which could be seen from the measurement done by the appellant on October 12, 2021 and certified by the appellant by their letter dated January 29/31, 2022. On a request made by the writ petitioner final measurement was done on June 09, 2022 and the same was certified on June 24, 2022. By letter dated June 24, 2022 the writ petitioner requested the appellant for final of OB and coal and finalised total excavation duly done by the writ petitioner as per the NIT followed by the work order, supplementary work order and further work order so that the contract can be closed as per the extant terms and conditions. By memo dated November 19, 2022 the appellant issued job

completion certificate in favour of the writ petitioner certifying that the writ petitioner duly executed and completed the project work. The writ petitioner by letter dated April 28, 2023 requested the appellant to take steps for closure of the contract and to release all dues/payments to the writ petitioner namely Performance Security cum Additional Performance Security and retention monies at the earliest. Since the request was not complied with a legal notice dated November 27, 2023 was issued to the appellant calling upon them to take immediate steps for closure of the contract and release all payments to the writ petitioner. Since the demand made by the writ petitioners were not complied with, they had filed the writ petition.

5. In the writ petition, the appellant prayed for a direction upon the appellant to issue closure of contract and release pending dues, as detailed in the Annexure P14 to the writ petitioner along with interest cost etc; to issue a writ of prohibition prohibiting the appellant from withholding the pending dues of the writ petitioner as detailed in Annexure P14 to the writ petition. The respondent contended that the action of the appellant in denying the writ petitioner for closure of the contract is wholly arbitrary, unreasonable and illegal and completely mala fide and unsustainable in the eye of law.

6. It was contended that in the absence of any allegations against the writ petitioner in regard to the execution of the project and no defect was also notified by the appellant to the writ petitioner in respect of the execution of the project work and also the defect liability period from the date of completion of the project was also over hence the action of the appellant is

arbitrary and unreasonable. By referring to the memo dated November 19, 2022, the writ petitioner contended that the appellants having accepted that the writ petitioners satisfactorily completed the project which was also recorded in the memo dated January 18, 2023, there was no justification for not releasing the pending payment etc. The appellants filed their affidavit-in-opposition in the writ petition denying and disputing the allegations made in the writ petition. It was contended that it is incorrect to state that there are no dues/recovery to be made from the writ petitioner and on scrutiny which has to be ascertained and other recovery are to be made from the writ petitioner. Various other details were also set out alleging that various sums have to deducted.

7. Clause 4.7 of the general terms and conditions of the contract was referred to and contended that the refund of security deposit shall be subject to the appellant right to deduct/appropriate its dues against the contractor under the subject contract or under any other contract. The averments made by the writ petitioner that they have no other alternate efficacious remedy except to move the writ petition under Article 226 of the Constitution of India was denied.
8. The learned Single Bench classified the claim made by the writ petitioner under two heads namely the final bills raised by the writ petitioners being the first component and the performance security and retention bills which were put in by way of security deposit as a second component. So far as the first component is concerned, the writ petitioners were non suited and it was held that such claim cannot be adjudicated in

the writ petition and the writ petitioner be best relegated to the competent civil court.

9. With regard to the second component namely security deposits, the learned writ court took into consideration the averments made by the appellants in paragraph 20 of the affidavit-in-opposition wherein they have stated that the writ petitioner/contractor had submitted Performance Security Deposit and retention money however Additional Performance Security Deposit was denied on the ground that there is no such clause in the agreement. Therefore, the learned writ court held that the limited scope of the writ petitioner claims can be decided within the scope of the writ petition is the entitlement of the writ petitioners to be refunded the admitted performance security deposit and retention money.

10. Further it held that since there is no dispute regarding the said amounts having been paid by the writ petitioners in the first place, no detailed adjudication by calling for evidence is required and what is necessary is only to interpret the provisions of the contract and come to a conclusion as to whether the appellants have arbitrarily and without any reasonable excuse withheld such components of the writ petitioners claimed which can very well be done within the confines of a writ petition. For such limited purpose the learned Single Bench referred to clause 4.7 of the general terms and conditions.

11. The learned Single Bench held that there is no dispute that the writ petitioner completed the work in question and in terms of clause 4.7 half of the security deposit was to be immediately refunded to the writ petitioner on completion of the entire work. The entitlement petitioners to the other half of

the security deposit was on expiry of six months performance guarantee period from the date of completion. Thus, it was held that the appellants are mandated since the term “shall be refunded” has been used to refund the entire security deposit, half immediately on the completion of the work and other half within 6 months thereof. The right of the appellant to deduct/appropriate its dues has to be read not in isolation but in the context of clause 4.7 as a whole. So construed such deduction or appropriation had to be done within the outer limit of six months. However, in the case on hand, no claim was raised by the appellants, admittedly within the said six months.

12. Further it was held that the work was concluded on June 01, 2022 and the job completion certificate was issued on November 19, 2022 and even if it is assumed that the entitlement of the writ petitioners to half of the security deposit on certification, the date of issuance of the job completion certificate is relevant date and hence half of the security deposit had to be paid immediately after November 19, 2022 and the other half with or without deductions within a further six months. With regard to the maintainability of the writ petition both the writ petitioner as well as the appellant relied upon the decision of the Hon'ble Supreme Court in ***M.P. Power Management Company Limited Versus Sky Power Southeast Solar India Private Limited and Others***¹, it was held that going by the said judgment, the principle that in the case of non-statutory contract, the rights are governed only by the terms of the contract may not continue to hold. Further it was held that the mere fact that the relief is sought under a

¹ (2023) 2 SCC 703

contract which is not statutory, will not entitle the state to ward off scrutiny of its action or inaction under the contract. Further if the complaining party is able to establish that the action/inaction, is perceived, arbitrary, the state can indeed be called upon to honour its obligations of making payments unless it be that there is a serious and genuine dispute raised regarding the liability of the state to make the payment. Further the learned writ court held that as per the language of clause 4.7, the appellant have the right to deduct/appropriate its dues under the present or any other contract or from that security deposit and not from the bill. Since clause 4.7 itself provides that the security deposit has to be refunded within the outer limit of six months performance guarantee period from the date of completion as such, no such deduction/appropriation can be made after the said period. With the above reasoning and certain other observations/findings, the writ petition was partly allowed as indicated above.

- 13.** The appellant is before us, contended that the prayer for recovery of money in the writ petition enforcement of a contractual dispute of the present nature is not permissible. The contract is non-statutory, the dispute under reference are contractual disputes which arose in the course of performance of a contract which is in the nature of the commercial contract interference in writ jurisdiction that too for a money claim is not maintainable. The claim of the writ petitioner is a matter of arbitration before the civil court. In this regard reliance was placed on the decision in ***State of Uttar Pradesh and Others Versus Bridge and Roof Company***

(India) Limited ². Further the contract does not become a statutory contract merely because it relates to construction of a public utility or has been awarded by the statutory body. The ordinary principles of law of contract would apply and dispute pertaining to a covenant in a contract or its enforceability are to be determined according to the usual principles and in support of such contention reliance was placed on the decision in **Kerala State Electricity Board and Another Versus Kurien E. Kalathil and Others** ³.

14. By referring to the decision in **M.P. Power Management Company Limited** (supra), it is submitted that in the said decision, it has been held a dressed up and disguise matter involving breach of contract cannot be said to be arbitrary state action. It has also been held that mere allegations of breach of contract would not suffice but there must be palpable, unreasonable or absolutely irrational action/inaction part of any principle, which is absent in case. Therefore, it is submitted that interference in respect of non-statutory contract on a conspectus of the above decisions leaving a very narrow ambit. Even if in the judgment of **M.P. Power Management Company Limited** (supra) is followed there must be absolute irrational act or an act bereft of reason. It is contended that in the present case when the contract permits appropriation of dues arising under other contract, this cannot be said to exist. It was further contended that whether payment is required to be done or not requires interpretation of clause 4.7 of the contract read with the other provision. Such interpretation

² (1996) 6 SCC 22

³ (2000) 6 SCC 293

would then be applicable to the facts of the case. The question of interpretation of a commercial contract is not permissible in writ jurisdiction. Relying upon the judgment in **Bridge and Roof Company India Limited** (supra) it is submitted that in the said decision it has been held that dispute relating to interpretation of the terms and conditions of a contract cannot be agitated and could not have been agitated in a writ petition.

15. Reliance was placed on the decision in **ABL International Limited and Another Versus Export Credit Guarantee Corporation of India Limited and Others** ⁴ wherein the Hon'ble Supreme Court held that a plain interpretation of the clause itself was sufficient and it does not require any aid much less the oral evidence to interpret the clause and therefore in the said case, where the court found that what was required was a pure interpretation of contract and no traverse to the facts of the case or anything would effect. However, this is not the case of the writ petitioners as interpretation of clause 4.7 and its applicability would require travelling to the facts of the case namely dates when the claim arose, dates when cause of action for recovery arose or all factual matters and therefore such interpretation in a writ petition was not permissible.

16. Clause 4.7 is clear and unambiguous permitting a right of recovery and courts will not permit rewriting or would not rewrite its contract. In support of such proposition, reliance was placed on the decision in **Orix Auto Finance (India) Limited Versus Jagminder Singh and Another** ⁵

⁴ (2004) 3 SCC 553

⁵ (2006) 2 SCC 598

and **Orissa State Financial Corporation Versus Narsingh Ch. Nayaki and Others** ⁶.

17. It is further submitted that there are two parts to clause 4.7. The first part require that security deposit would be refunded, subject to the company's right to deduction and appropriate its dues against the contractor, under this contract or under any other contract. The second part states that on completion of the entire work and certified as such by the engineer in charge one half of the security deposit would be refunded and the other half would be refunded after expiry of six months. The two parts of the same clause are separate and the time limit prescribed in the second part cannot be read into the first part and it would mean adding to the clause which is impermissible; Clause 4.7 has no time limit; until the time the payment is made by the appellant to the writ petitioners, its rights to forfeit on account of the claim made under this contract or any other contract remains enforce and cannot be curtailed. If the time limit is to be read into such power of the appellant, the same would be adding to or rewriting of contract, which the Hon'ble Court have said is impermissible. Literal interpretation of a reasonable person is what is required for the purpose of ascertainment of meaning. Arguments on *contra proferentem* may not be accepted. There is no ambiguity in the contract without which this principle has no application. There is no foundation for the argument of unconscionable bargain a term has been made.

18. With regard to the findings rendered by the learned Single Bench more particularly in paragraphs 29 to 31 and 36, it is contended that Order

⁶ (2003) 10 SCC 261

8 Rule 6A CPC cannot be a bar. There was no opportunity in the writ petition to file a counter claim. Therefore a analogy of filing the affidavit-in-opposition to a writ petition, to a written statement, thereby preventing a counter claim from being filed latter, is with respect in opposite. Further even such provision allow an extension by court. Further the cause of action has arisen in favour of the appellant and that would only merge in the judgment. Just because the writ petition was filed, would not prevent the appellant to proceed before the Civil Court and the analogy of the appellant rights being barred because it has filed the affidavit-in-opposition, may be an incorrect finding.

19. Further it is contended that clause 4.7 requires the security deposit to be paid within six months along with the retention money. However, even if it is not paid in time, because the accounts could not be finalised, if claims arise prior to the payment which would entail recovery, the right of recovery would not be abrogated. It was further contended that the claim and counter claim of the present nature arising out of a commercial contract should never be decided on affidavits and this prejudices the rights of parties available before the civil court. In support of such contention, reliance was placed on the decision in the ***State of Bihar Versus Jain Plastics and Chemicals Limited***⁷. Therefore, it is submitted that the cause of action of the appellant to recover in respect of the other contract accrued prior to expiry of six months time from the date of certifications of Bills. In this regard, the dates and events concerning the other Joint Venture's namely ST- CC and STA-DGM (JV) were referred to.

⁷ (2002) 1 SCC 216

20. It is further submitted that in respect of the other two contracts loss and damages for breach were being constantly suffered from the date of auction and therefore notice of demand is not relevant but what is relevant is the date of sufferance of loss which gives the cause of action to recover. It is submitted that the documents concerning the other two Joint Ventures were enclosed along with CAN 2 of 2024 and leave was sought for to rely on the documents and since both parties have referred to those documents it is prayed that CAN 2 of 2024 may be allowed.

21. The learned advocate appearing for the respondent/writ petitioner submitted that the appellants have broadly raised three issues for consideration namely (i) whether the writ petition is maintainable owing to the disputed question of facts and interpretations of the clauses of the contract? (ii) whether the act on the part of the appellants in not disbursing the security deposit can be termed as arbitrary, unfair and unreasonable action or not? (iii) whether interpretation of clause 4.7 of the condition of contract by the Hon'ble Single Bench while passing the impugned order can be construed as rewriting of condition of the contract or not? and (iv) whether the order impugned is sustainable or not?

22. The learned advocate appearing for the respondent referred to the dates and event as to when they had completed the work, the date of issuance of the job completion certificate, the date of completion of the period since the date of obtaining the job completion certificate and the dates of notice of termination and other contracts. It is submitted that in the writ petition it had been clearly stated as to the what are the amounts payable to the writ petitioner and for examining these issues in a proper

perspective the interpretation of clause 4.7 is required to be made in the light of text and context of the factual aspect of the matter. It is submitted that a plain reading of clause 4.7, the following rights and obligations of the parties to the contract are discernible. (a) A right has been conferred upon the appellant to deduct/appropriate its dues against the writ petitioner under this contract or any other contract from the security deposit of the writ petitioner (b) the appellant are obliged to refund 50% of the security deposit on the completion of the entire work certified by the engineer-in-charge (c) the appellants are entitled to deduct/appropriate its dues against the contract from the 50% of the security deposit lying with them within the period of six months from the date of completion. Therefore, the appellant is not obliged to refund the 50% of the security deposit within the six months period from the date of completion. (d) the writ petitioner being the contractor is entitled to refund on the remaining 50% of the security deposit on expiry of six months performance guarantee period. (e) In the case on hand, admittedly the appellant did not refund 50% of the security deposit on completion of the entire work as certified or by the engineer-in-charge on November 20, 2022. Therefore, non-payment of the 50% of the security deposit in consonance of clause 4.7 is an arbitrary action of the appellants. So far as the remaining 50% of the security deposit is concerned, the appellant is under an obligation to ascertain whether there is any dues against the contract under the present contract or any other contract to be deducted/appropriated till May 30, 2023. In the case on hand, there were no dues till May 30, 2023 and the appellant was not authorised to deduct/appropriate any sum from the remaining 50% of the security

deposit. Therefore, as on June 01, 2023, the writ petitioner is entitled to get his refund of his security deposit which the appellants were obliged to release and the remaining of the security deposit on June 01, 2023. Meres issuance of show cause notice does not ipso facto be termed as dues to be deducted/appropriated as no financial liability was accrued by issuance of a show cause notice to any of the constituent parties of the joint ventures. (g) the Hon'ble Single Bench carefully considered the attendant facts and circumstances in construing clause 4.7 of the conditions of the contract. Therefore, the appellant is obliged to release the security deposit on expiry of six months performance guarantee period. (h) The interpretation and/or construction of clause 4.7 cannot be said to be rewriting of the contract rather using the work "within" in paragraph 24 of the impugned order while construing clause 4.7 is mere error which is required to be modified/rectified appropriately by this court. (i) Referring to the decision in **Subodh Kumar Singh Rathour Versus Chief Executive Officer and Others**⁸ it is submitted that a decision has opened up a new vista where each and every action of the instrument in the realm of contracts are tested on the touchstone of justness, reasonableness and fairness and thus ascertaining arbitrariness viewing through losses of the contracts and its nuanced interpretation cannot be said to be outside the power of the judicial review. (j) Reliance was placed on the decision in **Nabha Power Limited (NPL) Versus Punjab State Power Corporation Limited**⁹ for the proposition that a commercial document must be interpreted in such a

⁸ 2024 SCC Online SC 1682

⁹ (2018) 11 SCC 508

manner as to give efficacy to the contract rather than to invalidate it. (k) Reliance was placed on the decision in **United India Insurance Company Limited Versus Harchand Rai Chandan Lal** ¹⁰ for the proposition that terms and conditions of the contract has to be strictly read and natural meaning be given to it. (l) Reliance was placed in **DLF Universal Limited and Another Versus Director, Town and Country Planning Department, Haryana and Others** ¹¹ for the proposition that the contract is interpreted according to its purpose (m) the interpretation of Clause 4.7 cannot be made to invalidate the intendment of the parties to the contract (n) the Hon'ble Single Bench while interpreting or construing clause 4.7 did not exercise its discretion arbitrarily and nor capriciously. (o) the writ petition is maintainable as the acts/omission on the part of the appellant in not releasing the security deposit in both stages appears to be arbitrary. (p) although the word used in paragraph 24 in the impugned order passed by the learned Single Bench cannot be said to be correct, it cannot be termed rewriting of the contract rather its mere error which needs to be modified/rectified by this court in furthering the intendment of the parties to the contract in construing clause 4.7 in the light of the attendant facts and circumstances of the case.

23. By placing reliance on the decision in the case of **Surya Constructions Versus State of Uttar Pradesh and Others** ¹², it is submitted that in the light of the principles propounded therein the writ petitioners are entitled to get the refund of the security deposit along with

¹⁰ (2004) 8 SCC 644

¹¹ (2010) 14 SCC 1

¹² (2019) 16 SCC 794

the interest awarded by the Hon'ble Single Bench. The learned Advocate appearing for the appellant would submitted that the respondents have relied on the decision in **Subodh Kumar Singh Rathour** (supra) and the said decision will not assist the writ petitioner and in this regard, elaborately referred to the facts of the said case more particularly the findings in the paragraph 59 to 62 and 70 and wherein the Hon'ble Supreme Court came to the conclusion that the decision to terminate the contract was beyond purview of the clause of the contract.

24. It is further submitted in paragraph 69 of the said judgment the Hon'ble Supreme Court has held that to ascertain whether the Act is arbitrary or not the court must carefully attend to the facts the circumstances of the case. It should be find out whether the impugned decision is based on any principle. if not, it may unerringly point to arbitrariness. If the act buttress or mere exhibition of the will of the authority it would sufficiently bear the insignia of arbitrariness. Therefore it is submitted that if the act of an authority is based on reason which is not totally absurd and if it acts are based on a principle, the writ court would not come to the conclusion of arbitrariness or caprice and would refuse to interfere or go into the validity or legality of the decision leaving the same to be done in a contractual forum or the civil court. In the case on hand, decision to withhold is based on a principle that is clause 4.7 of the contract. The writ court may not adjudicate whether the interpretation is correct and leave the same for decision in an appropriate proceeding. Since the action of the appellant is based on a contractual clause there is no arbitrariness or capriciousness. Therefore it is submitted that the decisions

relied on by the learned advocate appearing for the respondent does not assist them in its endeavour to support money decree based on interpretation of contract and the facts of the case and it cannot be called as arbitrary action and the action of the appellant cannot be called as arbitrary act.

25. Reliance was placed on the decision in **State of Gujarat and Another Versus Amber Builders** ¹³ wherein it was held that the judgment in **Union of India Versus Raman Iron Foundry** ¹⁴ was specifically overruled on the issue on hand that the Government had no right to appropriate the amount claimed without getting its first adjudicated was overruled by three judge bench of the Hon'ble Supreme Court in **H.M. Kamalauddin Ansari and Company Versus Union of India** ¹⁵. The Hon'ble Supreme Court in the said case found that there was a general condition which entitled the Government to recover the damages claimed by appropriating any sum which may become due to the contractor under other bills and the court disagree to the findings in **Raman Iron Foundry** and it was held that the decision in **Gangotri Enterprises Limited Versus Union of India** ¹⁶ is per incuriam because it relies upon **Raman Iron Foundry** which has been specifically overruled by three judge bench in **H.M. Kamalauddin Ansari and Company**.

26. We have heard Mr. Jishnu Chowdhury, learned Senior Advocate assisted by Mr. Syed Nurul Arefin, Mr. Rahul Singh and Mr. Syed Moyeenul Arefin learned advocates appearing for the appellants and Mr. Subhabrata

¹³ (2020) 2 SCC 540

¹⁴ (1974) 2 SCC 231

¹⁵ (1983) 4 SCC 417

¹⁶ (2016) 11 SCC 720

Datta assisted by Mr. Subhojit Seal and Mr. Aranya Saha learned advocates appearing for the respondents nos. 1 and 2.

27. The first issue to be decided is regards the maintainability of the writ petition and to what extent the writ court can interfere in contractual matters. In ***Bridge and Roof Company (India) Limited***, the Hon'ble Supreme Court pointed out that the contract which was subject matter of the said case is a contract in the realm of private law; it is not a statutory contract; it is the governed by the provisions of the Contract Act or may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to the interpretation of the terms and conditions of such contract cannot be agitated, and could not have been agitated in a writ petition, that is a matter either for arbitration as provided by the contract or for the civil court as the case may be.

28. It was further held that whether any money is due to the respondent therein from the appellant Government therein under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified or not are all matters which cannot be agitated in or adjudicated upon in a writ petition. Further it was held that the prayer in the writ petition to restrain the Government from deducting a particular amount from the writ petitioner's bills was a prayer which cannot be granted by the High Court under Article 226 of the Constitution. Further whether there has been reduction in the statutory liability on account of a change in law within the meaning of certain clauses of the contract is again not a matter to be agitated in the writ petition. A matter relating to interpretation of the terms of the contract should be

agitated before the arbitrator or the civil court as the case may be; if any amount is wrongly withheld by the Government, the remedy of the respondent is to raise the dispute as provided by the contract or approach the civil court as the case may be according to law. Similarly, if the Government says that if any over payment has been made to the respondent, the remedy is also the same.

29. In ***Kerala State Electricity Board***, the Hon'ble Supreme Court held that the interpretation and implementation of a clause in a contract cannot be subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. A contract would not become statutory simply because it is for construction of public utility and it has been awarded by the statutory body. Obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. It was further held that the disputes about the meaning of covenant in a contract or its enforceability have to be determined according to the usual principles of 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. The contract being not a statutory contract the dispute relating to the interpretation of the terms and conditions of such contract could not have been agitated in a petition under Article 226 of the Constitution of India.

30. In ***ABL International Limited*** while considering the matter pertaining to interpretation of a clause in the contract, the Hon'ble Supreme Court held that a plain interpretation of the clause was sufficient and it does not require any aid, much less oral evidence to interpret the clause.
31. In ***Jain Plastics and Chemical Limited***, it was held that the writ is not remedy for enforcing contractual obligations; writ petition under Article 226 is not the proper proceeding for adjudication of such disputes; the existence of alternate remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. In the facts of the said case, it was found that many matters could be decided after referring to the contention raised in the affidavits and counter affidavits, but that would hardly be the ground to exercise of the extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract.
32. In The ***Union of India Versus D.N. Revri and Company and Others***¹⁷ it was held that the contract being a commercial document between parties, it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract entered into between two lay parties to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning for such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow pedantic and realistic interpretation.

¹⁷ (1976) 4 SCC 147

33. In **United India Insurance Company Limited**, the Hon'ble Supreme Court held that it is a settled law that the terms of the contract have to be strictly read and natural meaning to be given to it. No outside aid should be sought unless the meaning is ambiguous.

34. In **DLF Universal Limited**, the Hon'ble Supreme Court while considering how a contract should be interpreted held as follows"-

It is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

As is stated in Anson's Law of Contract, "a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large."

The Court assumes:

"that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly. A party who claims otherwise, violates the principle of good faith.

(See Purposive Interpretation in Law by Aharon Barak: 2005 Princeton University Press).

35. The legal principle that could be culled out from the above decisions is that in matter relating to the interpretation of the term of a contract it should be agitated before the arbitrator or civil court as the case may be. If the contractor alleges that the Government has wrongfully withheld certain sums then the remedy is to approach the civil court and invoking Article 226 is not the proper remedy. External aids are not required to be applied while interpreting the terms and conditions of a contract. The subsisting contract cannot be rewritten in a writ proceeding. When serious disputed questions or rival claims arising out of breach of contract are required to be investigated and determined on the basis of evidence led in the civil court, the writ petition is not maintainable. While interpreting a contract it must be interpreted in such manner as to give efficacy to the contract rather than to invalidated it. The terms of the contract have to strictly read and natural meaning to given to it, no outside aid should be sought unless meaning is ambiguous.

36. Consistent with the character of purposive interpretation, the court is required to determine, the ultimate purpose of a contract primarily by the joint venture of the parties at the time the contract so formed; it is not the

intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to discover from the entirety of the contract and the circumstances surrounding its formation.

37. If the above legal principle is applied to the facts of the case, we have to necessarily hold that a writ petition for enforcement of the terms and conditions of a contract was not maintainable. Equally interpretation of the terms and contract of a contract would also fall outside the jurisdiction of a petition under Article 226 of the Constitution.

38. The learned advocate appearing for the respondent writ petitioner placed heavy reliance on the decision in **M.P. Power Management Company Limited**. The learned Advocate for the appellant endeavour to distinguish the decision by referring to the various paragraphs. Thus, we are required to consider as to whether the decision in **M.P. Power Management Company Limited** would assist the case of the appellant or that of the respondent. Paragraph 82 of the judgment would be relevant:-

We may cull out our conclusions in regard to the points, which we have framed:

i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

ii. The principle laid down in Bareilly Development Authority (supra) that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. *The mere fact that relief is sought under a contract which is not statutory, will not entitle the Respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.*

iv. *An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India MANU/SC/0002/1996 MANU/SC/0002/1996 : (1994) 6 SCC 651.*

v. *After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.*

vi. *Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.*

vii. *The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter. Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the Petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the*

grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

viii. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court in State of U.P. and Ors. v. Bridge & Roof Co. MANU/SC/0969/1996MANU/SC/0969/1996 : (1996) 6 SCC 22, by its observations in paragraph-14 in ABL (supra)).

ix. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

x. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

xi. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The

intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the Petitioner Under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the Petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

xii. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew

arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors. MANU/SC/0504/1991MANU/SC/0504/1991 : (1991) 1 SCC 212)). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

xv. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action

premised on breach of Article 14. [See Sudhir Kumar Singh and Ors. (supra)].

39. In the above decision the judgment in ***Radhakrishna Agarwal and Others Versus State of Bihar***¹⁸ was held not to continue to hold good in the light of the decision in ***ABL International Limited***. Equally it has been said that mere fact that the relief is sought under the contract, it is non statutory, will not be entitle the respondent state in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction as *per-se* arbitrary. Therefore, the scope of the interference in a matter where relief is sought for in a non-statutory contract is available when the complaining party is able to establish that the action/inaction is *per-se* arbitrary. It has also been held that the state can be called upon to honour its obligations of making payment however this will not be done when there is serious and genuine dispute raised relating to the liability of the state to make payment and such dispute ordinarily would include the contention that the aggrieved party has not fulfilled its obligations and the court finds such a contention by the state is a mere ruse or pretence. Ultimately it has been held that exercise of jurisdiction depends upon the facts of each case as to whether having regard to the scope of the dispute to be resolved, whether the court will still entertain the petition under Article 226 of the Constitution. Therefore, the respondent writ petitioner has to bring the relief sought for in the writ petition which admittedly pertains to interpretation and a claim arising out

¹⁸ (1977) 3 SCC 457

of non-statutory contract, within anyone of the parameters pointed out above.

- 40.** The learned Single Bench has interpreted clause 4.7 of the General Terms and Conditions of the contract which reads as follows:-

For such limited enquiry, Clause 4.7 of the GTC is required to be set forth below:

“4.7 Refund of Security Deposit : The refund of Security deposit shall be subject to company’s right to deduct/appropriate its dues against the contractor under this contract or under any other contract. On completion of the entire work and certified as such by the Engineer-In-Charge, one half of the security deposit remaining with the company shall be refunded. The other half shall be refunded to the contractor on the expiry of six months performance guarantee period from the date of completion as certified by the Engineer-In-Charge, subject to the following conditions:

a) Any defect/defects in the work, if detected after issue of completion certificate is/are rectified to the satisfaction of the engineer-In-Charge within the said defect liability period of six months or on its due extension till completion of the rectification work as required.

b) In the case of building work or other work of similar nature the refund shall be made on the expiry of the said six months period or at the end of one full monsoon period i.e. June to September. Whichever is later in point of time and any defects such as leakages in roof effloresces in walls, dampness, defects in drainage etc. should be rectified to the satisfaction of the Engineer-In-Charge.

c) (i) In case of supply, installation and commissioning of equipment for electrical and

mechanical works the refund shall be made on the expiry of defect liability period which will be one year from the date of commissioning of the equipment/completion of the work and/or rectification of any defect which may be detected in the individual equipment or the whole system under the contract, whichever is later.

(ii) All types of Manufacture's guarantee/warranty wherever applicable are to be issued/revalidated in the name of the owner by the Contractual agency and will be covered with relevant counter guarantee."

41. The writ petitioner has not challenged the above condition/clause nor they are entitled to challenge after having participated in the tender and come out successful. As pointed out above, the terms and conditions of the contract have to be interpreted without applying any externally aids bearing in mind that there are two parties to the contract and the question of unilateral interpretation to favour one to be desisted. Furthermore, the intention of the parties has to be culled out from the entirety of the contract and the circumstances surrounding its formation.

42. The learned Single Bench was of the view that the right of the appellant to deduct / appropriate its dues against the contractor under this contract or under any other contract is exercisable within a period of 6 months. The question would be whether the Court would be justified in reading the terms and conditions of the contract *dehors* than what has been stated in the contract. Admittedly, the writ petitioner has accepted the condition and performed the work allotted. Clause 4.7 consists of three limbs, the first of such is that the refund of security deposit shall be subject

to the company's right (appellant's right) to deduct / appropriate its dues against the contractor under this contract or under any other contract. The clause / sentence terminates with a “full stop”.

43. The second limb is on completion of the entire work and certified as such by the Engineer-in-charge one half of the security deposit remaining with the company shall be refunded. A simple and natural meaning to be given to the clauses that the second limb would be subject to the first limb, if the appellant exercises its right to deduct/ appropriate its dues against the contractor under this contract or under any other contract the second limb will not come into operation. If the second limb does not come into operation, it goes without saying that the third limb of the condition also would not come into operation. Therefore, in our view the learned Single Bench could not have super imposed the condition of 6 months which is present in the second limb of Clause 4.7 into the first limb. This clearly amounts to rewriting the contract which is impermissible.

44. We find from the pleadings in the writ petition that no such case was canvassed by the writ petitioners themselves. Therefore, going by the manner in which contracts have to be interpreted, the Court ought not to add or substitute any words in a commercial contract which has been entered into by both parties fully conscious of their rights and obligations. If this is the correct interpretation to be given to Clause 4.7, then the appellant has the right to deduct or appropriate its dues against the respondent writ petitioner under any other contract and no time limit has been prescribed for exercise of such right. Admittedly, there were two other joint ventures in which the respondent is a party namely, STA-CC(JV) and

STA-BGM(JV). So far as STA-CC(JV) is concerned, the last date for completion of the work as per the NIT was 1.6.2022. Breach was committed and notice was issued to the JV on 18.7.2022. On 19.1.2023 appellant issued a letter to STA-CC(JV) to commence work failing which informed them that in terms of Clause 6.1 of the GTC forfeiture of the security deposit will be made. The said joint venture filed a writ petition before this Court and the Court by order dated 15.5.2023 directed commencement of work failing which the appellant is entitled to take penal action. The said JV did not comply with the direction and ultimately notice of termination was issued on 26.6.2023 and the matter is now pending before the Arbitration Tribunal. So far as STA-BGM (JV) show-cause notice was issued on 18.7.2022 informing them that if they do not adhere to the terms and conditions penal action will be taken as per the NIT. The contract was terminated by notice of termination dated 1.1.2024 and damages of Rupees. 29,61,32,571/- has been claimed. We are informed that a suit was filed by the said joint venture, the plaint was rejected and appeal is pending. The contention of the respondent writ petitioner is that on the date when the completion certificate was issued to the writ petitioner JV i.e. 19.11.2022 there was no enforceable demand. In our view, this would be and incorrect manner in which the power of the appellant for deduction or appropriation of its dues can be interpreted. Clause 4.7 does not give any such leverage. It is plain and simple conferring power on the appellant to deduct / appropriate its dues against the contractor under any other contract and the refund of security deposit is subject to such exercise of power. Therefore, the respondent writ petitioner cannot be heard to be said that on the date of

issuance of completion certificate or on the expiry of the 6 months period there was no crystallized demand and therefore such right cannot be exercised at this juncture is an incorrect interpretation which would frustrate the object of the contract. The notice of termination of the contract should not be read in isolation but should be read along with the chain of events which preceded the termination. Therefore, the date on which the breach occurred at the first instance would be relevant for all purposes and the same cannot be ignored. The document has to be interpreted in a manner that conveys the proper meaning to a reasonable man. Undoubtedly, the writ petitioner is a corporate entity and not an individual and it is not the first time the writ petitioner have entered into contract with the appellant and in respect of the two other joint ventures they are defaulters and claims are pending. Therefore, we are of the view that the appellant would be entitled to exercise its powers under Clause 4.7 and withhold the payment under any other contract to which the writ petitioner is a party and this alone will be the correct interpretation of the terms and conditions of the contract as has been understood by the parties themselves and acted upon.

45. The decision in ***Subodh Kumar Singh Rathour*** was heavily relied on by the learned advocate appearing for the respondent writ petitioner. In fact, a careful reading of the judgment would lend support to the case of the appellant rather than the respondent. The Hon'ble Supreme Court after referring to a catena of decisions some of which we have referred above held that although disputes arising purely out of contracts are not amenable to writ jurisdiction yet keeping in mind the obligation of the State to act fairly

and not arbitrarily or capriciously, it is settled that when contractual power is being used for public purpose, it is certainly amenable to judicial review. After having rendered such a finding, the Hon'ble Supreme Court examined the facts of the case and found that the cancellation of the tender in the said case was influenced by extraneous consideration. The cancellation of the tender fell outside the purview of the terms and conditions of the contract. The Hon'ble Supreme Court on facts found that the matter is not purely a contractual; it is not a breach of contract, rather a plain and simple exercise of executive power. It was further held that the question whether an impugned action is arbitrary or not is ultimately to be answered on the facts and in the circumstances of a given case. The Court carefully attain to the facts and circumstances of the case; it should find out whether the impugned decision is based on any principle; if the act is capricious or exhibits whims of the authority. then it would bear the insignia of arbitrariness. The Court to assess whether an action complained of should be termed as arbitrary is by way of scrutinizing the reasons that have been assigned to such an action. Therefore, the Court had interfered in the said matter because it was a mala fide and whimsical exercise of power and admittedly exercise outside the scope of the contract. In the instant case the appellant seeks to enforce its powers under clause 4.7 of the GTC which is well within the scope of the contract.

- 46.** Therefore, we are of the view that the power exercised by the appellant to withhold the money is within the scope of the contract and therefore, the learned writ Court could not have allowed the writ petition in part, could not have interpreted the terms and conditions of the contract as has been done

and eventually passed a money decree in a writ petition when admittedly the power exercised by the appellant to deduct / appropriate its dues under any other contract was in exercise of powers conferred under Clause 4.7 and such exercise is neither extraneous nor arbitrary nor mala fide. As has been held above, the learned Writ Court could not have imported the time period of 6 months found in the second limb of Clause 4.7 to the first limb which is independent of the second limb. In other words the second limb could come into operation only if there are no circumstances warranting exercise of the power by the appellant under the first limb of Clause 4.7.

47. Therefore, we have no hesitation to hold that the action of the appellant is neither unfair nor unjust nor unreasonable nor arbitrary but an exercise done under the terms and conditions of the contract. The Court cannot fix a time limit within which period the deduction or forfeiture can be done by the appellant either under the subject contract or under any other contract and if such interpretation is made it would undoubtedly amount to rewriting a contract which is impermissible under Article 226 of the Constitution.

48. As mentioned above, the sufferance of loss is relatable to the date of breach of other joint venture, and the question of a crystallized liability to be in place on the date of issuance of completion certificate in the subject contract is not required and if such interpretation is given, it would frustrate the terms and conditions of the contract which cannot be done.

49. For all the above reasons, the appeal is allowed and the order and direction issued by the learned Single Bench is set aside. The above decision will not prevent the respondent with petitioner from availing other remedies

before the appropriate forum in the appropriate manner and the findings rendered above will not prejudice the rights of the respondent in such proceedings that the appellant may avail. No costs.

50. CAN 4 of 2024 has been filed by the appellant on 26.09.2024 praying for a direction upon the respondent writ petitioner to extend the bank guarantee which was filed by the respondent writ petitioner.

51. In the light of the judgment allowing this appeal, no further orders are required in CAN 4 of 2024 and the same stands disposed of along with the connected applications.

(T.S. SIVAGNANAM, CJ.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.- SACHIN/PRAMITA)