



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

WRIT PETITION NO. 5868 OF 2024

M/s Arunodaya Coal Agency, Through its Proprietor
Koshor Sankhala, A MSME, duly registered under
M.S.M.E. Act having its office at Jamuna Tower, Plot
No.C-152/1, Near Dakshin Mukhi Hanuman Mandir,
Pachpedi, Raipur, email kishoraca@gmail.com.

PETITIONER

VERSUS

1. Western Coalfields Ltd., Through its Chairman
and Managing Director (CMD), Coal Estate,
Civil Lines, Nagpur.
2. Western Coalfields Limited, Through its General
Manager (CMC), Coal Estate, Civil Lines, Nagpur.
3. Western Coalfields Limited, Through its Area
General Manager, Majri Area, Kuchana,
Tq. Bhadrawati, District Chandrapur.

RESPONDENTS

Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, Counsel for the
petitioner.

Shri A.S. Jaiswal, Senior Advocate with Shri N.G. Moharir, Counsel for the
respondents.

CORAM : NITIN W. SAMBRE AND MRS.VRUSHALI V.JOSHI, JJ.

DATE ON WHICH ARGUMENTS WERE CONCLUDED: MARCH 04, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : MARCH 05 , 2025

JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and the writ petition is
heard finally with consent of the learned counsel for the parties.

2. The petitioner has questioned the impugned decision dated September
26, 2024 whereby the contract dated May 02, 2022 for transportation of
coal so also for removal of overburden came to be terminated. The
petitioner is also debarred from participating in the future tenders of the
Western Coalfields Limited in individual capacity or as partner in
partnership firm or Joint Venture for a period of two years from the date

of issuance of the impugned order as per the terms and conditions of the contract. The petitioner's security deposit, performance guarantee and additional performance security at the disposal of the respondents also came to be forfeited.

3. The facts necessary for deciding the writ petition are as under:-

The petitioner is a proprietary concern, claiming to be registered as a small scale enterprise under the Micro, Small, Medium Enterprise Act on October 09, 2023. The respondent-Western Coalfields Limited, is a company registered under the Indian Companies Act, 1956 entered into an agreement/contract for execution of job viz. Removal of all type of materials (Hard OB) in all kinds of strata by hiring of equipments, removal of all type of materials (BC soil/Soft OB), removal of all type of materials (OB Rehandling), evacuation of coal from quarry face and transportation to surface by hiring of equipments as per instruction of Engineer-in-charge at Amalgamated Yekona-I and II OCM (Yekona-I Quarry) of Majri area for an approximate amount of Rs.103 Crores.

4. It is claimed that by this time the petitioner has excavated more than 40% of the allotted work. On March 10, 2024, the staff from the security squad of the respondents lodged a police complaint which has resulted into registration of Crime No.225 of 2024 for an offence punishable under Sections 379, 511 of the Indian Penal Code based on an incident of theft. In the said First Information Report, it is alleged that during the patrolling on March 10, 2024 at about 3.00 a.m. in Yekona

mine, a Hyva truck and a poclain machine were found to be used for commission of an offence of theft of coal. A truck bearing registration No.MH-40-CD-6911 and the said poclain were noticed at the spot. It was noticed that instead of stocking the coal at the designated place earmarked by the respondents, the coal extracted from the mine was dumped at the dumping yard. The poclain machine was used for loading the coal from the dumping yard on the said Hyva truck which was not registered with the respondents in matter of contract in question. During investigation, the coal stock of capacity of two Hyva trucks was noticed at the dumping yard and the poclain machine was used for loading the said stolen coal. It is also narrated in the First Information Report that the moment the security personnel including the complainant reached the spot, the poclain machine operator as well as driver of the Hyva truck ran away and around forty tonne of stolen coal was detected.

Subsequent thereto, on March 12, 2024 the respondents advised the petitioner to remove its representative Ankit Yaduvanshi from the work site within three hours as he has failed to avoid the aforesaid criminal incident of theft of coal. The petitioner thereafter removed its said employee from the site and also caused an enquiry.

5. On March 18, 2024 the show cause notice based on the aforesaid incident of theft came to be issued to the petitioner, calling upon him as to why the contract awarded to him on May 02, 2022 shall not be terminated, as to why the petitioner shall not be debarred from

participating in future tenders of Western Coalfields Limited in individual capacity, as partner in partnership firm or as a member of the Joint Venture for a period of two years and as to why the security deposit shall not be forfeited or 20% of the value of the incomplete work shall not be recovered from the security deposit. The said show cause notice is claimed to have been based on the above incident of theft. The petitioner submitted its reply to the show cause notice on March 27, 2024 requesting the respondents to allow it to complete the work in hand during the pendency of the investigation by the Investigating Officer in the interest and benefit of both the petitioner and the respondents. It appears that based on the show cause notice a communication offering personal hearing was issued on April 04, 2024 and the hearing appears to have been conducted on April 12, 2024. After hearing was concluded, *vide* order impugned dated September 26, 2024, penal action of termination of contract dated May 02, 2022, debarring the petitioner from participating in future tenders of Western Coalfields Limited in all the capacities and also recovery of an amount was ordered.

6. While assailing the above decision, Shri M.G. Bhangde, learned Senior Advocate for the petitioner would urge that the petitioner is required to operate pursuant to the terms of contract in question at Yekona-I mine. According to him, the nature of work to be executed involves the equipments to be used viz. Poclain machine, Hyva truck etc. According to him all the vehicles of the petitioner are registered with the

respondents. For security reasons, only registered vehicles are permitted entry in the area of mine including that of the stock yard. He would claim that no vehicle other than the registered vehicles with the respondents are permitted by the security agencies to enter in the mine area. He would claim that since the petitioner is operating Yekona-I mine, there is intersection of Yekona-II mine. The presence of Hyva truck bearing registration no.MH-40-CD-6911 which was not registered with the respondents can lead to the only inference that it was the failure of the respondents to regulate the entry of the registered vehicles which has resulted into the alleged act of theft.

7. The learned Senior Advocate would further urge that the investigation in the offence being Crime No.225 of 2024 is in progress and till this date it cannot be inferred that the petitioner is involved in the said offence of theft. The learned Senior Advocate would invite our attention to the show cause notice dated March 18, 2024 to claim that the show cause notice speaks of deployment of tippers in the route that is not approved for excavation of coal from quarry face and transportation to surface and dumped the coal in BC Soil Dump.

According to him, the order impugned though refers to the reply dated March 27, 2024 and the hearing dated April 12, 2024, the order is based on a vehicle bearing registration no.KA-01-AM-3667 which was neither registered with the respondents nor was a part of the show cause notice. According to him, there is no reference to vehicle KA-01-AM-3667

being involved in the alleged offence of theft or for illegal transportation of coal in the show cause notice, however the same is formed to be the basis for passing the order impugned. As such, he would urge that the tangible material formed to be the basis for passing the impugned order is not provided and the order impugned is based on such material which was not part of the show cause notice. He would claim that the order impugned is based on general and vague observations for which neither an opportunity to show cause nor hearing was offered. As such, his contentions are, the order impugned is beyond the scope of the show cause notice and suffers from unreasonableness. The learned Senior Advocate so as to substantiate his aforesaid contention that the entire area is under the scanner of the security, would draw support from paragraph 15 of the rejoinder affidavit of the petitioner which reads thus:-

“15. The petitioner then transports coal to the coal stock yard by the specified route. There is a way bridge on this route, which is managed by the officials of the WCL. There is CCTV camera installed at the way bridge for twenty four by seven surveillance of the activities on the said route. After weighment, the tipper of the petitioner filled with coal proceeds to the coal stock yard/crusher where coal is emptied. The empty tipper then either goes back to the mine for refilling of coal, by the same route (except the portion where the way bridge is installed) or, if not required, to the camp of the petitioner by the same specified route which is ahead of Coal Stock Yard. Besides the CCTV camera, the security personnel patrol the mine area 24/7. Thus, no coal can be carried by the vehicle of the petitioner to any place except the coal stock year/crusher.”

8. The learned Senior Advocate for the petitioner would claim that paragraph 23 of the rejoinder demonstrates that there was lacunae in the matter of operation of the mines by the respondents and such lacunae are redressed by them on March 09 and 10, 2024. He would draw support from the pleadings in paragraph 23 of the rejoinder which reads thus:

“23. That, after the alleged incident, that took place in the night between 09.03.2024 and 10.03.2024, the respondents have realised this fact, though belatedly. Therefore, as a preventive measure, the respondents have erected barrier/check post (like the one at toll gates) at the aforesaid intersection of the routes. The official of the respondents manages the said barrier. In view of the barrier now put in place by the respondents, the vehicle carrying coal supplied by WCL to the purchaser from “Yekona II” mine cannot enter the route/road from “Yekona I” mine to the OB dump of the said mine.”

9. The learned Senior Advocate for the petitioner would urge that Clause 9 of the tender document deals with termination, suspension, cancellation and foreclosure of contract which reads thus:-

“9. Termination, Suspension, Cancellation & foreclosure of contract:

The company shall, in addition to other remedial steps to be taken as provided in the conditions of contract be entitled to cancel/terminate the contract in full or in part, if the contractor

a. or

b. or

c. commits default/breach in complying with any of the terms and conditions of the contract and does not remedy it or fails to take effective steps for the remedy to the satisfaction of the Engineer-in-charge, then on the expiry of the period as may be specified by the Engineer-in-charge in a notice in writing, or

d. or

e. or

f. or

g. or”

Drawing support from the language of Clause 9(C), it is urged that the respondents initially issued directions to the petitioner to remove its representative Ankit Yaduvanshi from the site which they have responded forthwith by taking corrective measures. According to him, even before the issuance of the show cause notice, the respondents should have given an opportunity to the petitioner to take effective steps to remedy the shortfall or default to the satisfaction of the respondents and upon failure to do so within a reasonable period as prescribed under Clause 9(1), the show cause notice could have been issued. As such, the learned Senior Advocate would urge that the impugned order goes contrary to the very mandate provided under Clause 9(C) of the tender conditions.

10. So as to substantiate the aforesaid contentions, the learned Senior Advocate for the petitioner would invite our attention to paragraphs 10 and 26 of the judgment of the Apex Court in *State of Uttar Pradesh Versus Sudhir Kumar Singh & Others* [(2021) 19 SCC 706] so as to claim that in case of breach of fundamental rights which contain public law element, a plea of breach or non-compliance of the principles of natural justice is made against the State and if such plea is found to be sustainable and sound in constitutional law, the writ Court can exercise the jurisdiction based on the principle of 'Public Law Element'. According to the learned Senior Advocate for the petitioner, violation of principles of natural justice can be *ex-facie* inferred from the aforesaid submissions as the order impugned is not based on the events which are forming to be the basis for issuance of the show cause notice.

11. According to the learned Senior Advocate for the petitioner, the respondents' plea that the alternate remedy of arbitration cannot be said to be available as the respondents in the facts and circumstances of the case in hand should have referred the matter to arbitration the moment the petitioner has disputed the claim made in the show cause notice. According to him, the respondents cannot be a judge in their own cause and try to substantiate the contentions from the judgment of the Apex Court in *State of Karnataka Versus Shree Rameshwara Rice Mills Thirthahalli* [(1987) 2 SCC 160], particularly paragraph 7 thereof which reads thus:-

“7. On a consideration of the matter we find ourselves unable to accept the contentions of Mr. Iyenger. The terms of Clause 12 do not afford scope for a liberal construction being made regarding the powers of the Deputy Commissioner to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. The crucial words in Clause 12 are “and for any breach of conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party”. On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If it was the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of Clause 12 would have been entirely different. It cannot also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess damages, as pointed out by the Full Bench, is a subsidiary and consequential power and not the primary power. Even assuming for argument's sake that the terms of Clause 12 afford scope for being construed as empowering the officer of

the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12.”

According to the learned Senior Advocate for the petitioner the said judgment was further followed by the Apex Court in *J.G. Engineers Private Limited Versus Union of India & Another* [(2011) 5 SCC 758], paragraphs 19 and 20 of which reads thus :-

“19. *In fact the question whether the other party committed breach cannot be decided by the party alleging breach. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum, that is, a court or an Arbitral Tribunal.*

20. *In State of Karnataka v. Shree Rameshwara Rice Mills [(1987) 2 SCC 160] this Court held that adjudication upon the issue relating to a breach of condition of contract and adjudication of assessing damages arising out of the breach are two different and distinct concepts and the right to assess damages arising out of a breach would not include a right to adjudicate upon as to whether there was any breach at all. This Court held that one of the parties to an agreement cannot reserve to himself the power to adjudicate whether the other party has committed breach. This Court held:(SCC p.164, paras 7-8)*

“7. ... Even assuming for argument’s sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12.

8. We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed.”

The judgment in *Shree Rameshwara Rice Mills Thirthahalli* (supra) was further followed by this Court in *Municipal Corporation of city of Amravati Versus Chhugram Lahorimal Khatri* [**First Appeal No. 596 of 2004**] decided on September 24, 2008.

12. According to the learned Senior Advocate for the petitioner, in case if the respondents are coming out with a case of alleged default against the petitioner, the respondents should have conducted themselves in terms of contract, particularly Clause 9(C) of the tender document which deals

with termination, suspension, cancellation and foreclosure. He would claim that such clause of granting an opportunity to address the grievance made by the respondents by granting reasonable time is mandatory. He would claim that in support of the aforesaid submissions reliance can be placed on the judgment of the Apex Court in *M.P. Power Management Company Limited, Jabalpur Versus Sky Power Southeast Solar India Private Limited & Others* [(2023) 2 SCC 703]. He would claim that paragraphs 150 and 174 of the said judgment would justify his submissions, which read as under:-

“150. Article 9 deals with events of default and remedies. Article 9.1 is relevant and it deals as follows:

“9.1 Defaults and termination.– In case of default, the non-defaulting party shall issue a default notice to the defaulting party. If the default is not fully set right within three months from the date of issue of the default notice, then in case of default by the seller, the MPPMCL by giving seven days’ termination notice in writing, may terminate the agreement. In case of default by MPPMCL, the seller may in the same way terminate the agreement.”

174. Continuing with the analysis of Article 9.1, what was expected of the appellant was, as the non-defaulting party, to issue a default notice to the defaulting party viz. the seller, which in this case is the first respondent. Article 9.1 further clearly contemplates that if the default is not fully set right within three months from the date of issue of the default notice, then, in the case of default by the seller, the appellant was to serve a seven days’ notice of termination. The notice was, undoubtedly, to be in writing. It is by the second notice, which is to be of the duration of seven days that the appellant could validly terminate the agreement. Thus, PPA clearly indicates the issuance of a default notice when seller commits an act of default. Without issuing the first default notice, giving three months’ time from the date of issue of the notice, the second notice, which would be a notice of termination, cannot be issued.”

As such, the learned Senior Advocate for the petitioner would urge that the order impugned is not sustainable and is liable to be quashed and set aside by overruling the objection of the respondents of non-maintainability of the writ petition in view of existence of an arbitration clause.

13. The learned Senior Advocate for the petitioner would invite attention of this Court to Clause 16 of the tender conditions. According to him, the same provides for guidelines for banning of business. By relying on Clause 16(1) of the tender conditions, he would claim that before passing of the order of banning the business dealing with any contracting entity, it is mandated that the principles of natural justice are observed. According to him, the reasons for proposed removal are required to be made available to the petitioner so as to enable it to furnish explanation about its adverse conduct viz. An act or omission which is likely to be formed to be the basis for passing an adverse order. As such, according to him, such facts which are considered for forming an accusation or charge should not only be communicated but also the grounds providing reasons for proposed removal. He would claim that the authority i.e. the respondents herein are required to apply its mind to the explanation tendered by the person proceeded against. So as to substantiate his contentions, he has drawn support from paragraph 12 of the judgment of the Apex Court in *Tarlochan Dev Sharma Versus State of Punjab & Others* [(2001) 6 SCC 260], which reads as under:-

“12. One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a necessary corollary therefrom that what has not been communicated or not relied on in the show-cause notice as a ground providing reason for the proposed removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to the explanation furnished by the person proceeded against and this must appear from the order passed under Section 22.”

As such, he would claim that the order of blacklisting since goes contrary to the established principles of natural justice, the same has to be rendered illegal and contrary to the fundamental right guaranteed under Article 14 of the Constitution of India.

14. As against above, Shri A.S. Jaiswal, learned Senior Advocate for the respondents would oppose the prayers made in the writ petition. While resisting the claim made by the petitioner, he would invite the attention of this Court to the contents of the First Information Report. According to him, the complaint came to be lodged on March 10, 2024 by the security in-charge. He would claim that it is an admitted position on record that the poclairn machine involved in the offence of theft is owned by the petitioner. A specific attribution is made against the petitioner about the

use of poclain machine in the matter of commission of the offence in question. According to him, there was no cause as to why the coal extracted from the face of mine to be transported and stocked at the assigned Stock Yard was lying in the dumping yard which is used for dumping of overburden. According to him, even if Hyva truck bearing registration no.MH-40-CD-6911 is claimed to be not owned by the petitioner still the poclain machine belonging to the petitioner was actively found involved in the aforesaid offence as the said machine was into live operation for loading the stolen coal in the Hyva truck. The offence of theft *prima-facie* appears to be committed with the aid of the machines belonging to the petitioner. According to him, the aforesaid material is sufficient enough to infer involvement of the petitioner in the illegal act of theft of coal and to facilitate the transportation by use of its own machines.

The learned Senior Advocate for the respondents would urge that immediately on March 10, 2024, i.e. the date on which the offence was registered, a communication was issued to the petitioner informing about the aforesaid act that the poclain machine was in live operation in the matter of commission of theft of coal from the dumping yard. An explanation was called from the petitioner as to why an action should not be initiated against him as per the Rules. According to him, the said communication was responded to by the petitioner on March 12, 2024. The petitioner denied the said activity as it was claimed in the explanation that the poclain machine was deputed and operated under the supervision of the security staff of the respondents. In addition to above, the learned

Senior Advocate for the respondents would invite our attention to the terms of the contract particularly Clause 12 of the tender document which provides for the responsibility of the contractor. According to the learned Senior Advocate for the respondents, it is for the contractor to make own arrangements of all the equipments for the execution of the work including that of its maintenance.

15. The learned Senior Advocate for the respondents would further urge that the petitioner is asserting his rights under the contract. The terms of contract also provide for the remedy in case if there exists a dispute. Drawing support from Clause 13 of the General Terms & Conditions appended to the agreement dated January 13, 2023, it is urged that it is open for the petitioner to take recourse to the remedies which are expressly provided and to which the petitioner has agreed in the agreement based on the dispute which is sought to be canvassed through the present writ petition.

The learned Senior Advocate for the respondents would further urge that the petitioner, in view of the aforesaid, has an alternate remedy of taking recourse to the arbitration and in such an eventuality, since the present writ petition involves disputed questions of fact is liable to be dismissed.

16. We have considered the rival submissions.

17. The petitioner has entered into a contract with the respondents for following works.

“**Job No.(1)** : Removal of all type of materials (Hard OB) in all kinds of strata by hiring of equipment such as HEMM, excavators, tippers, drills, dozers, graders and water sprinklers including its drilling, excavation, loading, transportation, dumping, spreading, dozing, grading and water sprinkling at specified places as per instruction of Engineer in-charge at Amalgamated Yekona I & II OCM (Yekona 1 Quarry) of Majri Area. **Job No.(2)** : Removal of all type of materials (BC soil/Soft OB) in all kind of strata by hiring of equipment such as HEMM, excavator, tippers, dozers, graders and water sprinklers including its excavation, loading, transportation, dumping, spreading, dozing, grading and water sprinkling at specified places as per instruction of Engineer in-charge at Amalgamated Yekona I & II OCM (Yekona 1 Quarry) of Majri Area. **Job No.(3)** : Removal of all type of materials (OB Rehandling) in all kinds of strata by hiring of equipment such as HEMM, excavator, tippers, dozers, graders and water sprinkler including its excavation, loading, transportation, dumping, spreading, dozing, grading and water sprinkling at specified places as per instruction of Engineer in-charge at Amalgamated Yekona I & II OCM (Yekona 1 Quarry) of Majri Area. **Job No.(4)**: Evacuation of coal from quarry face and transportation to surface by hiring of equipment such as pay-loader and tippers, dozers, graders & water sprinklers including loading, transportation, dumping, spreading, dozing, grading & water sprinkling at specified places as per instruction of Engineer-in-charge at Amalgamated Yekona I & II OCM (Yekona 1 Quarry) of Majri Area.”

18. The contract was to be executed in terms of the agreement and work order dated December 05, 2022. The agreement dated January 13, 2023 is also not in dispute. Clause 9 of the General Terms & Conditions contemplates termination, suspension, cancellation and foreclosure of contract. Clause 12 contemplates responsibilities of the contractor viz. the petitioner. Amongst others, the obligation under Clause 12 (xii) provides for the responsibility of the contractor like the petitioner to make necessary security arrangements to prevent theft of coal from the project premises, during transportation and also at coal dumps. Clause 13

provides for settlement of disputes and Clause 16 contemplates guidelines for banning of business.

19. On March 10, 2024, the security in-charge of Yekona mine received an information about the involvement of a poclain machine and a Hyva truck in theft of coal which resulted in lodging a complaint with Police Station Warora. An offence punishable under Section 379 and 511 of the Indian Penal Code *vide* Crime No.0225 of 2024 came to be registered against unknown persons. During investigation of the spot of theft, it is noticed that the Hyva Truck and Poclain Machine used in commission of offence was found parked at the dumping yard. Forty Tonnes of extracted coal which should have been taken to an appropriate place of stock yard was found dumped over black cotton soil dump at the yard which can be assessed to be of two Hyva Truck load. The said coal stock which was illegally dumped at overburden yard was sought to be loaded through Poclain machine in Hyva truck. The truck and the machine as such were found to be used in the commission of offence of theft of stock of coal. The moment security team arrived at the spot, the driver and operator of both the vehicles fled away from the spot. At the relevant time, the Hyva truck was found to be loaded with coal.

It appears that immediately after registration of the aforesaid offence, the fact was brought to the notice of the petitioner *vide* communication dated March 10, 2024 and it was informed to submit explanation and the proposed steps to be taken at its end. The petitioner submitted its explanation on March 12, 2024 stating that the petitioner

was carrying out removal of overburden and coal shifting under the supervision of the employees of the respondents. The petitioner specifically denied the use of Poclain machine and the Hyva truck for loading the stolen coal and as such the entire incident was denied.

20. The respondents on March 12, 2024 issued another communication thereby informing the petitioner that the petitioner has violated the assigned route for excavation from quarry face as the vehicles of the petitioner were not plying on the assigned route. It is specifically intimated that the petitioner has attempted theft of coal by engaging Poclain machine owned by it to which the representative of the petitioner Ankit Yaduvanshi was a party to. Accordingly, as per Clause 12 of the General Terms & Conditions the said employee was directed to be removed from the spot which was responded to by the petitioner by doing so. The aforesaid incident has led to issuance of a show cause notice to the petitioner on March 18, 2024 whereby entire incident of theft of coal, involvement of Poclain machine and Hyva truck was brought to its notice. Through the said show cause notice, the petitioner was asked as to why the termination of work awarded *vide* LOA dated May 02, 2022, debarring from participating in future bids/tenders of WCL for a period of two years, forfeiture of security deposit or recovery of 20% of value of incomplete work shall not be ordered. The said show cause notice was replied by the petitioner on March 27, 2024. The said reply read as under:-

“With due regards and utmost polity we beg to submit in reply to the Show Cause Notice served upon us that we categorically deny all the allegations levelled against us in the above referred Show Cause Notice and further submit as under:

- 1. That we are a reputed contractor firm and have unblemished record of service in your organization as well as in some other subsidiaries of Coal India Ltd.*
- 2. That there cannot be raised any finger of doubt regarding our integrity and loyalty towards the organizations we serve to.*
- 3. That this is specifically denied that ‘we have deployed our tippers in the rout that is not approved for evacuation of coal from quarry face and transportation to surface and dumped the coal in BC Soft Dump.’*
- 4. That this is vehemently denied that ‘on dated 3rd shift of 09-03-2024 in Yekona I quarry of amalgamated Yekona I and II OCM, that attempt of theft of coal in BC Soil Dump was being done by any truck belonging to us or deployed by us and which was half loaded by our Hydraulic Ex-310 D 3 Caterpillar make.’*
- 5. That this is further to clarify that dated 09-03-2024 in 3rd shift our Hydraulic Ex-310 D 3 was kept idle and no workman belonging to our firm was sent to run that equipment.*
- 6. That our men and machinery employed in your mine are under constant surveillance of CCTV camera fixed in the mine premises and under the patrolling done by Security agencies deployed in your mine for 24X7 days basis.*
- 7. That we have learnt that this matter has already been referred to local police for investigation also.*

Sir, this may kindly be considered that we have not violated any clause of the contract agreement and are doing our work sincerely to the full satisfaction of your officials; hence imposition of penalty and debarment from work at this stage is not warranted.

Your authority is therefore requested to allow us to continue and complete the work in hand for the benefit of both the parties; till the investigation in the incident completes. For this act of yours we shall remain obliged forever.

We assure our full cooperation in conducting such enquiries. Thanking you.”

21. The respondents thereafter issued another communication dated April 04, 2024 to the petitioner calling upon it to attend the personal hearing consequent to the show cause notice dated March 18, 2024 and the reply submitted by the petitioner on March 27, 2024. *Vide* reasoned impugned order dated September 26, 2024, the contract awarded to the petitioner came to be terminated and the petitioner has been debarred from participating in future bids/tenders of WCL for a period of two years from the date of issuance of the impugned order. *Vide* impugned order, it is ordered to forfeit the security deposit comprising of performance guarantee, retention money and additional performance security, if any or in alternate 20% of the value of the incomplete work.

22. Though it is claimed by the learned Senior Advocate for the petitioner that the show cause notice was in relation to only alleged incident of theft of coal with the help of Poclain machine and Hyva truck, the respondent no.3 has placed reliance on the movement (GPS Tracking) of the vehicle bearing registration no.KA-01-AM-3667 in the impugned order. Though it is claimed by the learned Senior Advocate for the petitioner that the tangible material viz. GPS tracking in relation to vehicle KA-01-AM-3667 was not provided to the petitioner, the aforesaid observation in the impugned order can be substantiated from the conduct of the petitioner.

In the writ petition, the petitioner has come out with following pleadings in relation to excavation and dumping of coal in paragraphs 19, 23 and 32. The same read as under:-

“19. The petitioner categorically states that no coal from Yekona mine has been taken by the petitioner and that the entire coal mined from Yekona mine has been dumped by the petitioner only at the area designated by the respondents for stocking the coal. This can be very well verified by the respondents from the quantity of coal mined and quantity of coal stocked by the petitioner at the designated areas. The respondents are aware about the same and, therefore, have not placed any material in that regard.

23. In the Show Cause Notice as well as impugned order, reference has been made to clause 6 of the Special Terms & Conditions for Hiring Contracts Excavation, Removal of Overburden, Extraction of Coal and Transportation, clause 9.2 of the General terms and conditions of the NIT, clause 16(2)(xiii) and 16(4) of the Guidelines for Banning of Business of General Terms and Conditions of contract. However, it is not all determined as to how the petitioner has committed breach of the aforesaid clauses. There is absolutely no material on record to show that any tipper of the petitioner was plying on a route which was not approved or that hydraulic Ex-310 D3 Caterpillar vehicle was run by an employee of petitioner for the purpose of loading coal in truck no.MH40CD6911 or that any attempt was made by any employee of the petitioner to make an attempt of theft of coal. In absence of aforesaid material, the clauses relied upon are not at all attracted. The impugned order is therefore, arbitrary, unreasonable and violative of Article 14, 19(1)(g) and 21 of the Constitution of India.

32. It is further submitted that the respondents have alleged in the impugned communication that in an attempt of theft of coal, the petitioner's hydraulic Ex-310 D3 Caterpillar vehicle was used to load the coal in the truck bearing no.MH 40 CD 6911. In this behalf, the petitioner submits that the petitioner has never attempted any theft and the said vehicle of the petitioner was never used for theft of coal. The respondents have not based their allegations on any material therefore the same are baseless and fallacious. It is submitted that as stated earlier the petitioner has already completed 50% work of the subject contract and has been completed many such projects successfully in the past, therefore, there was no occasion for the petitioner to indulge into such petty thefts as alleged by the respondents.”

23. As stated earlier, under Clause 12 of the General Terms & Conditions, certain responsibilities of the contractor like the petitioner are mentioned which includes precautions to be taken by the petitioner at all times for protection of persons (including employees) and property. Its sub-Clause (xii) as reproduced hereinabove mandates the petitioner to make necessary arrangements to prevent theft of coal from project premises during transportation and also at coal dumpings. Clause 6 of Special Terms & Conditions for Hiring Contracts Excavation and Removal of Overburden reads as under:-

“6.00 Contractor’s dumper/tipping truck should ply only on specified routes/roads. In case, plying of the dumper/tipping truck on any other route/road become necessary, due to any reason, prior approval for the same shall be taken by the contractor from the Project Officer/General Manager. In case of violation of this provision penalty may be imposed on the contractor and/or the contract terminated.”

24. In this background, the conjoint reading of the contents of the First Information Report referred above, the response of the petitioner to the communication dated March 12, 2024 by removing its employee from the site, simplicitor denial of the incident of theft and the opportunity of hearing offered to the petitioner sufficiently establishes that it was the failure of the petitioner to protect the property of the respondents of which it was a custodian. The admission given by the petitioner in communication dated March 12, 2024 that the Poclain machine was available 24X7 for working at the site where it was detected sufficiently speaks of the machinery of the petitioner being involved in the offence.

Not only the fact of the machinery being involved, the petitioner owes an explanation for the coal of around forty tonne being found at the overburden dumping site which was within the reach and control of the petitioner. The fact about ownership of the Poclain machine being not denied by the petitioner and Hyva truck being plied on irregular routes viz. the route which was not assigned, sufficiently establishes the conduct of the petitioner of being involved in the act of theft of coal.

25. The show cause notice dated March 18, 2024 in categorical terms refers to the act of the petitioner of dumping the coal at black cotton soil dump, the deployment of tippers at an unapproved route and involvement of both the vehicles, viz. Poclain machine and Hyva truck in the commission of offence. The conduct of the petitioner of indulging in the theft of coal amounts to violation of the General Terms and Conditions of the agreement and also the Special Terms and Conditions for Hiring Contracts Excavation and Removal of Overburden. The reply given by the petitioner, which is reproduced hereinabove, simplicitor speaks of denial. The fact that the Poclain machine and the Hyva truck being found on the spot of theft with forty tonne of coal which otherwise should have been dumped by the petitioner at the coal dump yard and not black cotton soil yard is a clear pointer to the involvement in the theft. The Poclain machine being made operational 24X7 by the employees of the petitioner sufficiently speaks of the violation of the terms and conditions (General as well as Special) mentioned in the notice inviting tender.

26. The petitioner has come up with a case that he was executing the work in question under the supervision of the staff of the respondents and as such it was for the respondents to come out with the explanation as to how the Hywa Truck, Poclain Machine of the petitioner and another vehicle bearing registration no.KA-01-AM-3667 was noticed at the spot of the incident. So as to substantiate the said contention, the petitioner has relied on the spot of incident which has intersection of Yekona-I and Yekona-II mines. The petitioner has also claimed that after the incident in question, having noticed the security breach, the respondents have installed the security barriers. As such, the learned Senior Advocate for the petitioner has sought to impress upon this Court to claim that the fact of theft of coal was within the knowledge of the respondents as the work in question was being executed under their supervision and as such, they themselves owe an explanation.

The aforesaid contentions are required to be rejected in the light of Clause 12 of the General Terms and Conditions. Apart from above, the operation of a poclain machine owned by the petitioner in the matter of loading of stolen coal which was caught red-handed and abandoning of the machine and the vehicles owned by the petitioner, sufficiently speaks of the *prima-facie* involvement of the petitioner in the matter of theft of coal. It is not the case of the petitioner that it has taken any criminal or otherwise action against the employees who have conducted themselves contrary to the terms of the agreement. It is only upon the ultimatum given by the respondents, the petitioner has removed its authorized

person Ankit Yaduwanshi from the spot. Had it been its case that the said employee was not involved in the crime, the petitioner would have resisted the directions of the respondents of removing its authorized person from the spot. The petitioner has tried to shift the burden *qua* the security breach on the respondents. Perhaps, while doing so, the petitioner should have been sensitive to the terms of the agreement, viz. plying of the Poclain Machine and the Hywa Truck only on the allocated route and not at the spot where Poclain Machine was traced while loading the stolen coal. It is indeed a serious offence that the public property is sought to be stolen from the authorized custody by the contractor like the petitioner under the garb of execution of some other work, viz. removal of overburden. Even otherwise, the petitioner has not come with any cogent explanation for dumping the coal on black soil dumping yard when such authorization was not at all given. If the staff of the petitioner was not involved in the offence, then there would have been no occasion for the operators to abandon the Poclain Machine before fleeing away from the spot of offence. All these questions are not at all answered by the petitioner.

27. The petitioner in our opinion cannot travel beyond the reply given by it to the show cause notice dated March 18, 2024 while questioning the impugned order, particularly when the impugned order is based on the facts which are informed to the petitioner before passing the impugned order. In this background, the claim put forth by the learned Senior

Advocate appearing for the petitioner by drawing support from the judgment of the Apex Court in *M.P. Power Management Company Limited, Jabalpur* (supra), particularly paragraph 174 will hardly be of any assistance.

28. The petitioner has claimed that post the incident in question, the respondents have undertaken the job of installing the security barriers at the intersection of Yekona-I and Yekona-II mines. Of course, even if such steps are taken by the respondents that by itself would not help the petitioner in coming out of the case when the same has formed to be the basis for passing the impugned order. Such security barriers installed by the respondents were with an intention to strengthen their security and not to cover up any lacuna on their part in the matter of alleged theft of the coal.

29. Apart from above, even if the unregistered vehicle entered the mine area, the coal was being loaded in it from the Poclain Machine belonging to the petitioner. If the petitioner's Poclain Machine which was authorized to operate in the mine area was being used for loading the unregistered vehicles, the respondents rightly inferred that the petitioner through its employees having involved in the theft of coal, has failed to give any explanation in response to the show cause notice issued to it. In such an eventuality, even if the alleged role of Truck registration no.KA-01-AM-3667 is ignored, still the other material in our opinion is sufficient enough to sustain the impugned order of blacklisting.

30. In the investigation of the offence, it is revealed that the stolen coal quantity was to the extent of Forty Tonnes and a Hywa truck bearing registration No.MH-40-CD-6911 which was not registered with the respondents and the Poclain Machine belonging to the petitioner were noticed on the spot. The driver of Hywa Truck was arrested whereas the operator of the Poclain Machine was reported to be absconding. In this background, even if the petitioner has disputed about the theft of coal, still the fact remains that the vehicles were seized from the spot, the operator of the Poclain Machine had fled the spot taking advantage of darkness, and the driver of the Truck was subsequently apprehended. As such, the respondents were within their powers under the agreement and the terms and conditions of the contract to proceed against the petitioner and after hearing the representative of the petitioner, the impugned order came to be passed. It has to be as such inferred that the order was passed by the respondents as per the powers conferred under the agreement *qua* the contract in question and as such, it cannot be said that the respondents cannot adjudicate the claim. As such, support drawn from from the judgment of the Apex Court in *Shree Rameshwara Rice Mills Thirthahalli* (supra) is wholly misplaced.

31. Further contention of the petitioner that the respondents should have referred the matter to the Arbitrator having noticed the breach of terms and conditions of the contract and the agreement is concerned, we are required to be sensitive to the fact that once we have held that the

respondents were authorized under the law to pass the order impugned, it cannot be said that they were duty bound to take recourse to the arbitration proceedings. It is for the petitioner, if it is aggrieved by the impugned decision to take recourse to the arbitration proceedings, if so desired. Therefore, the support drawn from the judgment of the Apex Court in *J.G. Engineers Private Limited* (supra) by the learned Senior Advocate for the petitioner is of hardly any relevance.

Similarly, the support drawn by the learned Senior Advocate for the petitioner from the judgment of the Apex Court in *Sudhir Kumar Singh & Others* so as to claim that the impugned order is passed in violation of the provisions of Article 14 of the Constitution of India as the material which was not the subject matter of the show cause notice was taken basis of, we have ignored such material which was not made available to the petitioner. We have recorded a finding that for the remaining part of the show cause notice, the petitioner owes an explanation so as to satisfy that the impugned order was not sustainable. No doubt, there is a 'Public Law Element' in the case in hand. However, not only the fact about the issuance of show cause notice but also the petitioner's explanation to the same was considered after granting an opportunity of hearing, can be inferred from the impugned order and in such an eventuality, it cannot be said that there is a breach of the principles of natural justice. As such, the aforecited judgment will also not be helpful to the case of the petitioner.

32. The impugned order rather speaks of the non-arbitrary approach on the part of the respondents in a contractual matter and as such it has to be inferred that the respondents being public authorities acted within the four corners of law in passing the impugned order. It cannot be said from the perusal of the impugned order that the respondents in any manner acted arbitrarily, unreasonably or violated the mandate of Article 14 of the Constitution of India thereby passing the impugned order to the detriment of the petitioner.

33. In any case, if the petitioner is aggrieved, it has the remedy of taking recourse to the arbitration proceedings, if it has suffered any damages because of the impugned order passed by the respondents. In our opinion, no case for causing indulgence is made out. As such, since the writ petition lacks merit, the same stands dismissed. In the facts of the case, there shall be no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

APTE

Shri M.G. Bhangde, Senior Advocate for the petitioner seeks continuation of the interim arrangement.

His prayer is objected by Shri N.G. Moharir, counsel appearing for the respondents.

However, since the interim arrangement, as agreed between the parties, is in operation for last six months, we deem it appropriate to continue the same for a period of four weeks from today.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

APTE