2025:CGHC:2540-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1102 of 2024

Sutlej Taxtiles And Industries Limited Unit Rajasthan Textile Mills A Company Incorporated Under The Companies Act, 1956/2013 Having Its Registerd Office At Pachpahar Road, Bhawani Mandi Through Its Authorized Signatory Sunil Sharma S/o- Murlidhar Sharma, Aged About- 60 Years, R/o 81 Vit Vihar, R F C Colony, Near Bright Land School, Vaishali Nagar, District- Jaipur, Rajasthan, Pin Code-302021

... Petitioner

versus

1 - South Eastern Coal Fields Limited A Company Registered Under Companies Act 1956/2013 Through Its Managing Director, Having Registered Office At Seepat Road, Bilaspur.

2 - Head of Department (Marketing And Sales) South Eastern Coalfields Limited, Office At Seepat Road, Bilaspur

3 - General Manager (M & S) South Eastern Coalfields Limited, Office At Seepat Road, Bilaspur

4 - Chief Manager (M & S/Comml.) South Eastern Coalfields Limited, Office At Seepat Road, Bilaspur

5 - General Manager (Finance) South Eastern Coalfields Limited, Office At Seepat Road, Bilaspur

6 - Chief Manager (Finance) I/C Sales Wing Finance South Eastern Coalfields Limited, Office At Seepat Road, Bilaspur

7 - South Eastern Central Railway Through Senior Divisional Operating Manager (Railway Operation), Bilaspur, Chhattisgarh.

... Respondents

For Petitioner	:	Mr. Ankit Singhal, Advocate
For Respondents No.1 to 6	:	Ms. Astha Shukla, Advocate
For Respondent No.7	:	Mr. Ramakant Mishra, Deputy Solicitor General.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

***Per* Ramesh Sinha, Chief Justice**

15.01.2025

Heard Mr. Ankit Singhal, learned counsel for the petitioner. Also heard Ms. Astha Shukla, learned counsel appearing on behalf of respondents No.1 to 6 as well as Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing on behalf of respondent No.7.

2. By way of this writ petition, the petitioner has prayed for following reliefs:

> "*10.1 Issue a writ of certiorari to quash and set aside the impugned order dated 13.10.2023 (Annexure P-1) passed by Respondent No. 1, which rejected the Petitioner's representations concerning the (refund of bank guarantees, advance payments, the illegal retrospective termination of the Fuel Supply Agreements (FSAs), and related matters.*
>
> *10.2 Issue a writ of mandamus or certiorari, or any other writ, order or direction of like nature and direct the respondents to complete the*

financial reconciliation proceedings entered into with the petitioner, in terms of their undertaking provided on 13.07.2022, and thus inclusive of the dispute raised by the petitioner vide its letter dated 15.12.2021; and direct the respondents not to impose any penalties on petitioner on account of seller' fault.

10.3 Issue a writ of mandamus or certiorari, or any other writ, order or direction of like nature and direct the respondents to refund the subject bank guarantees deposited by the Petitioner and the advance payments made by the Petitioner in accordance with the terms of the FSAs, without any further delay.

10.4 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case may also kindly be granted.

10.5 Cost of the petition."

3. Brief facts of the case, are that, the petitioner is a Company registered under Companies Act, having its registered office at PachPahar Road, Bhawani Mandi, Rajasthan and engaged in manufacturing of textiles and to meet the power requirements for running its industry, the petitioner set up a 12 MW Captive Power Plant (for short, 'CPP') in their premises as well as for running of the Plant, the petitioner had obtained coal linkage for procuring coal from respondent No.1, i.e. South Eastern Coalfields Limited (a subsidiary of

Coal India Limited) (for short, ‘SECL’) through Linkage and under the linkage system of supply of coal, the respondents considering the nature of the consumption and requirement of coal, used to grant coal linkage to the concerned unit. Accordingly, the Petitioner was also granted coal linkage and the required coal was being supplied on demand in intervals of 3-4 months. Subsequently, the respondents initiated e-auctioning of coal in the year 2017 and the petitioner entered into and executed two separate Fuel Supply Agreement (for short, ‘FSA’) with the respondents for supply of coal bearing FSA No. A-328 dated 21.11.2017 for 17,000 MT coal and FSA No.A-1025 dated 08.03.2019 for 9,200 MT coal. The period of each agreement was 5 years. After introduction of e-auction system, the petitioner executed the Fuel Supply Agreement for getting supply of coal from the respondents and since there are no alternative sellers of coal available, the petitioner was constrained to accept the terms and conditions fixed by the SECL. As per Clause 12.2.1 of the FSA, the petitioner had to furnish bank guarantee against financial coverage. The amount of bank guarantee is equivalent to estimated coal value of one rack/MSQ and accordingly, the petitioner submitted the following bank guarantee to the respondents by way of financial coverage. In terms of Clause 7.1.1 of the FSA, the petitioner has also submitted Performance security by way of bank guarantee, which was equivalent to 6% of the notified price of the Allocated Coal Quantity (for short, ‘ACQ’). The petitioner petitioner had applied for allotment of coal and paid for the same in advance and

respondents received as well as approved the application and allotted the coal to the petitioner. However, allotted coal was not supplied to the petitioner in spite of repeated requests and reminders. The respondents have failed to supply coal even against allotment for the longest time, and then only supplied a fraction of allotted coal quantity, that too after an inordinate delay of more than 1 year, which resulted in closure of the petitioner's CPP.

4. It is the case of the petitioner, the grim situation with respect to supply of coal can be appreciated from the fact that out of total 8 rakes, which were allotted to the petitioner during the years 2017-18, 2018-19 & 2019-20, the total quantity of which amounting to 31,816 MT is available and on the petitioner's request, the same was released for transportation by road 9 months after allotment. One rake allotted on 17.05.2018 was cancelled by the petitioner on 09.01.2020 due to inordinate delay in supply of coal, after a period of 21 months and another rake allotted for the year 2019-20 for 4,012 MT against FSA No. A-1025 was also not received. Unfortunately, remaining allotted rakes were cancelled on 11.12.2020. The petitioner, upon receiving no coal even after allotment of rakes by the respondents, and having paid in advance for the same, made several requests and representations to the respondents through post and email on different dates. However, the respondents did not respond to the same, which caused severe financial loss and hardship to the petitioner, leaving it with no other choice than to close down its CPP. Faced with mounting losses in trying

to run its CPP with no responses and no timeline as to when coal would be made available by the respondents, the petitioner was forced to send a letter dated 03.03.2020 to the respondents to seek permission to cancel both the FSAs (i.e. A-328 dated 21.11.2017 and A-1025 dated 08.03.2019) without imposing any penalties on the petitioner.

5. Upon receiving the letter/representation dated 03.03.2020, the respondents were constrained to take a decision regarding grant/rejection of permission to the petitioner for cancellation of both FSAs. However, the respondents, vide letter dated 17.06.2020, only addressed and allowed the termination of FSA No.A-328 w.e.f. 17.06.2020 as also intimated that the Performance Security Deposited against the said FSA will be refunded subject to settlement of all dues, penalty and pending bookings, if any. The Petitioner waited for word from the respondents regarding the cancellation of FSA No. A-1025, the respondents instead of that, issued notice dated 09.11.2020 informing their consumers about their intention to liquidate all arrears of the years 2018-19 & 2019-20. Despite the said fact, the petitioner approached the railway authorities to try and secure the use of Kota Goods Siding for importing coal. However, the railway authorities declined to allow the same. On receiving the notice dated 09.11.2020, the petitioner, vide letter No. 1349 dated 25.11.2020, reminded the respondents about its request dated 03.03.2020 for permission for cancellation of FSA No. A-1025, as well as any rakes allotted under it, without imposing any penalty. However, despite the reminder, the respondents did not inform

the petitioner of the fate of the request for cancellation of FSA No. A-1025. The petitioner again vide letter dated 07.04.2021, requested the respondents once again for permission of FSA No. A-1025 and outstanding rakes under it, without imposing any penalty or punitive charges as well as issaunce of refund of its advance money, i.e. Rs.1,27,66,265/- as also prayed for release of its bank guarantee and once again, the respondents chosen to ignore the letters dated 25.11.2020 and 07.04.2021. In the meantime, 15 months after when permission had been sought by the petitioner for cancellation of FSA No. A-1025 vide letter dated 03.03.2020, the respondents finally sent a letter dated 04.06.2021 with regard to termination of FSA No. A-1025 with retrospective effect, w.e.f. 18.03.2020 as also ordered for consequential forfeiture of Security Deposit.

6. After receiving the letter dated 04.06.2021, the petitioner objected against the retrospective termination of FSA No. A-1025 vide letter dated 24.06.2021. The Petitioner has also requested for refund of the amount paid by it as advance payment for supply of coal, i.e. Rs. 1.28 crores. While the petitioner was awaiting a reply to its objection dated 24.06.2021, all of a sudden the petitioner's bank sent letter dated 12.08.2021 informing it that the respondents have approached for encashment of its bank guarantee, then the petitioner immediately approached the bank vide letter dated 13.08.2021 and requested to hold encashment of Bank Guarantee till the issue can be resolved with the respondents. Thereafter, the petitioner requested the respondents to

review their decision and not to encash the bank guarantee till the settlement of dispute as the same is valid upto 27.12.2023. However, the respondents expressed their inability to help in the matter and the bank guarantee bearing No. 007261LG009918, dated 28.12.2018, amounting to Rs.11,01,240/- was encashed by SECL on 02.09.2021. Vide letter dated 25.10.2021, the petitioner once again requested the respondents to treat the termination of FSA No. A- 1025 w.e.f. 04.06.2021, i.e. the date of issuance of letter intimating termination; and not to impose any penalty upon the petitioner; and consequently release all the pending bank guarantees and refund the advance amount paid by the petitioner. However, no reply has been received from the respondents.

7. Being aggrieved with the action on the part of the respondents, the petitioner was constrained to invoke Clause 16 of the FSAs for settlement of dispute, and in this regard, it has submitted a detailed representation dated 15.12.2021 before respondent No. 2. However, despite several reminders, the respondents neither replied to the said representation nor acted upon the terms of Clause 16 of the FSAs. Feeling aggrieved with the same, the petitioner was constrained to file a writ petition bearing WPC No.2863 of 2022 before this Court, which was disposed of by this Court vide order dated 13.07.2022. In terms of the said order, the petitioner accepted the invitation made vide letter dated 11.07.2022 to visit the office of the SECL for financial reconciliation and settlement of dispute in terms of Clause 16 of the FSAs; and

communicated the same vide letter dated 14.07.2022. Accordingly, the respondents invited the petitioner on 26.07.2022 for this purpose vide letter dated 18.07.2022. The parties sat for reconciliation of accounts and were able to tally all transactions except for four(4) Compensation Bills amounting to Rs.1,85,14,942/- that were raised by the SECL, which the petitioner objected against on the grounds that the un-lifted quantity of coal treated as failed quantity by the SECL in the said Compensation Bills was not supplied as a result of respondents' default in delivering the coal within a reasonable time after allotment, and thus penalizing the petitioner for the same was illegal as also against the express terms of the FSAs. The petitioner was amenable to signing the reconciliation statement after recording the above noted disagreement in the same, but this was not acceptable to the respondents, and thus the financial reconciliation could not be finalized.

8. Furthermore, the respondents have refused to proceed with the settlement of the dispute raised by the petitioner under Clause 16 of the FSAs, vide its letter dated 15.12.2021, and claimed that the same would be taken up after financial reconciliation had been completed. Thereafter, the petitioner wrote letter dated 10.08.2022 to the respondents explaining its contention and reasoning for denying the aforementioned compensation bills, and requesting the respondents to cancel the same. In response to the letter dated 10.08.2022, the respondents issued letter dated 26.09.2022, whereby they have reiterated their stand and defended raising the compensation bills.

Further, they have re-invited the petitioner for finalizing/signing the financial reconciliation statement for settlement of dues; but have re-asserted that dispute raised by the petitioner under Clause 16 will be resolved only after the financial reconciliation has been completed. In response to the same, the petitioner had written letter dated 01.10.2022, requesting the respondents for settlement of its grievances under Clause 16 of the FSA. The Petitioner also wrote a reminder letter dated 09.01.2023 reiterating their disagreement with the Respondents' raising of compensation bills as also the Finance Department of the SECL for not allowing the disagreement in the financial reconciliation statement. The Petitioner has further requested for settlement of their grievances under Clause 16 of the FSA in terms of the order dated 13.07.2022 passed by this Court in WPC No. 2863 of 2022. Thereafter, the petitioner received an email dated 02.02.2023 sent by respondent No.3 Manager (M&S) SECL, Bilaspur, to schedule a meeting for 11.02.2023 for data rectification of all FSA under linkage auction for FY 2016-17 to 2019-20. The parties then exchanged emails dated 10.02.2023, 13.02.2023, 15.02.2023, and 16.02.2023 and scheduled the meeting on 23.02.2023 for reconciliation and settlement of accounts statement, but the respondent's representatives have once again restrained the petitioner's representative from signing the statement of data reconciliation with remarks of the petitioner's disagreement. Thus, the statement of data of FSAs could not be finalized. Thereafter, on 04.03.2023, the SECL again sent email asking the petitioner for signing

of data reconciliation statement without adding any remarks relating to the disagreement regarding the four compensation bills, and in response to the same, the petitioner sent an email dated 11.03.2023, enclosing a letter dated 10.03.2023. In response to the petitioner's letter and request for action, the SECL again sent email dated 21.03.2023 stating that data reconciliation of the linkage auction is a separate exercise and the petitioner has to take up its grievances regarding the same to the concerned sections of SECL.

9. Being aggrieved by the actions on the part of the respondent authorities, the petitioner has again approached this Court by filing a writ petition bearing WPC No. 2895 of 2023, calling upon question the respondents' pressure and dilatory tactics, and sought for direction to respondents to complete the financial reconciliation proceedings regarding the FSAs entered into between the petitioner and respondent authorities regarding settlement of dispute in terms of Clause 16 of the FSAs. Meanwhile, during the pendency of WPC No.2895 of 2023 before, respondent No.1 issued the impugned order dated 13.10.2023, rejecting the petitioner's representations concerning refund of the bank guarantees, advance payments, illegal retrospective termination of the FSAs and other related matters. Pursuant to which, the Petitioner informed the Court about such development and sought permission to withdraw the WPC No.2895 of 2023 with a liberty to challenge the impugned order dated 13.10.2023. The said permission was granted by the Court vide the order dated 30.10.2023. Hence, the present writ

petition has been filed by the petitioner challenging the impugned order dated 13.10.2023.

10. The respondent-SECL has filed reply-affidavit on 02.04.2024, in which, it has been pleaded that the relief prayed in the petition cannot be granted without interpreting the Clauses of the agreement of the FSA. It has been further pleaded that as evident from the submissions made by the learned counsel for the petitioner, allotment of rakes was given by Railways in a time bound manner and it can be observed that transportation from the delivery point be it road or rail is the prerogative of the customer. Once the rake is allotted, it shall remain valid for supply as per prevailing Railways rules. Therefore, delay, if any, in supply of rakes after allotment is not attributable to SECL. Besides, the FSA also provides the facility for change of mode (ref. Clause 5.4 and Annexure - X of the FSA), option of which was available but was not availed by the petitioner during the tenure of the FSA to secure supplies against said pending allotted rakes and instead the petitioner opted for cancellation of such rakes. As per Notice No.SECL/BSP/M&S/Sales Coordn-Oprn/561 dated 18.06.2020 wherein based on deliberations between Coal India Limited and Railways, an option was provided by the Railways to the consumers who were not willing to avail supplies against allotted rakes, to keep their supplies deferred. This option was exercised by the petitioner on 19.06.2020. The option for deferment was at the sole discretion of purchaser, hence the responsibility of any loss of supplies was entirely on the purchaser. Subsequently, Railways also

issued a circular no: CMP/Policy/2020 dated 03.07.2020 in this regard and vide notice dated 09.11.2020, SECL informed all concerned that in reference to the option given to consumers to keep arrear rail programmes in abeyance due to Covid-19 pandemic, since situation had improved, consumers may get it reactivated as Railway may withdraw this facility. Subsequently, the petitioner instead of getting the allotted rail programs reactivated, opted for cancellation of the same. Reasons cited i.e., CPP plant was inactive and not operational resulting in no coal consumption, unavailability of a functional unloading facility at Kota Railway Siding, lack of sufficient storage space for accommodating more than 2 rakes and petitioner's financial condition, are solely attributable to the purchaser i.e. the petitioner and are beyond the purview of FSA or the seller i.e. SECL. It has been further pleaded regarding termination of FSA A1025, in pursuance to letter dated 03.03.20 (received on 18.03.2020) and subsequent letter dated 07.04.2021, during the said period, the intent of the petitioner had remained the same i.e., for cancellation of said FSAs. Therefore, said FSA was terminated. However, SECL considered to terminate the said FSAs as per receipt of petitioner's first letter dated 18.03.2020 itself. It was explained being a signatory of FSA, petitioner was well aware of the provisions of the FSA. As such, request made in letter dated 03.03.2020 (received on 18.03.2020) has been accepted to the extent of termination of FSA and request for cancellation of FSA with penalty was waive-off/concession, contrary to provisions provided in the FSA.

Moreover, the intent of the petitioner to cancel the FSA remained the same, which was reinforced by the petitioner vide letter dated 07.04.2021. In pursuance to Clause 17 of the FSA, based on the notice of termination dated 03.03.2020 given by the petitioner citing reasons not attributable to the Seller i.e., SECL, the said FSA was terminated w.e.f 17.06.2020 upon completion of 3 months period as per the provisions of FSA and the same has been communicated to the petitioner vide letter dated 17.06.2020, wherein it has been mentioned that “Performance Security Deposit” against the said FSA will be refunded subject to settlement of all the dues, penalties, and pending bookings etc., if any, as per FSA provisions.

11. It has been further pleaded in the return that under Clause 16 of FSA for settlement of dispute, the representatives of Sutlej Textiles and Industries Limited (for short, ‘STIL’) visited SECL office on 25.08.2023 and initiated discussions on their letters No. RTM/SECL/1254 dated 10/21.08.23 and RTM/SECL/ dated 25.08.2023 and after careful examination of the submissions made by STIL in light of the provisions of the FSAs, representation of STIL was disposed off vide reasoned order dated 13.10.2023. It has been also pleaded that as the allotted rail programs were solely opted for deferment and subsequently, cancelled by STIL, the non-acceptance of compensation claim for short lifting of coal, is not tenable, as per the terms of the FSA. As such, the petitioner is not entitled for any relief.

12. A rejoinder-affidavit was also filed by the petitioner on 02.05.2024, in which, it has been categorically alleged that the crux of the petition lies in challenging the legality of retrospective termination, which according to the petitioner is unlawful. It has been further alleged that since the termination is retrospective and the respondents are the State authority, their action constitutes an arbitrary exercise of power. As such, this Court has jurisdiction to intervene and nullify the unlawful retrospective termination. It has been pleaded that respondent authorities have terminated the FSA for several reasons, such as :

> *"(i)* ***Mischaracterization of Petitioner's Request:*** *The petitioner's letter dated 03.03.2020, was not a termination notice. It was a request for permission to cancel the FSAs without penalty due to the Respondent's alleged seller defaults and delays. The respondent's labeling of this request as a termination notice is misleading and unfair.*
>
> *(ii)* ***Violation of Principles of Natural Justice****: The petitioner never received a hearing before 04.06.2021 decision that retrospectively terminated the FSA. This violates the fundamental right to a fair hearing, rendering the retrospective termination decision invalid. Since the 04.06.2021 decision relied on a flawed process, its illegalities taint the impugned order dated 13.10.2023, order which upholds*

the decision of 04.06.2021 for retrospective termination.

(iii) ***Inconsistent Termination Decisions****: The petitioner submitted a single request letter dated 3.03.2020, requesting termination of both FSAs (A-328 and A-1025) due to the Respondent's defaults. Notably, the Respondent accepted the request for FSA A-328 in June 2020. However, the respondent inexplicably delayed responding to the request for FSA A-1025 for a full 15 months. This delay shows the arbitrary actions of the respondent.*

(iv) ***Retrospective Termination After Lock-In Period****: The respondent ultimately terminated FSA A-1025 retrospectively to 18.03.2020. This date falls within the lock-in period of the contract. However, the termination notice itself wasn't issued until 04.06.2021, well after the lock-in period expired. Hence, FSA continued till the Lock-in period. There's no justification for applying a retrospective termination after the lock-in period had already ended.*

(v) ***Improper Procedure****: Retrospective termination is not allowed under the FSAs or the Indian Contract Act, 1872. The proper termination procedure outlined in Clause 17.2 of the FSA also wasn't followed."*

13. It has been further alleged that respondent's actions lacked consistency in handling the requests for the two FSAs, which caused an

unreasonable delay in responding to the request for FSA A- 1025 and then employed an arbitrary retrospective termination after the lock-in period had expired. It has been submitted that the respondents are responsible for supplying coal under agreements FSA A-328 and A-1025 and they failed to meet their obligations. This resulted in severe financial losses and ultimately forced the petitioner to close their CPP. The petitioner has faced several issues:

> *“a) They received only a fraction of the promised coal rakes over a three-year period.*
> *b) Significant delays plagued deliveries, with one rake arriving over two years late.*
> *c) Excessive delays forced the Petitioner to cancel other rakes.*
> *d) Despite receiving advance payment, the Respondent failed to deliver the contracted coal.*
> *e) The situation was further complicated by the closure of a nearby railway siding, which would have facilitated coal deliveries.”*

14. It has been also submitted that a disagreement is stalling the reconciliation of accounts between the petitioner and the respondents and the issue centers on compensation bills/penalty charges of over Rs.1.85 crore levied by the respondents for "failed deliveries" of coal and the "failed deliveries" were a consequence of the respondent's delay in supplying the coal in the first place. However, the respondent insists on finalizing the entire account, which includes the disputed

charges, before addressing the petitioner's complaint. The said fact is essentially forces the petitioner to accept the charges before they can even be heard. The petitioner had requested that the charges be cancelled or at least the disagreement of the petitioner be documented, but so far, the respondents have not agreed. It has been lastly alleged that the petitioner has raised genuine grievances against the arbitrary actions of the respondent authorities, as such, the writ petition may kindly be allowed in the interest of justice.

15. Mr. Ankit Singhal, learned counsel for the petitioner has submitted that retrospective termination of the Fuel Supply Agreements (FSAs) is on the ground of request letter dated 03.03.2023 issued by the petitioner, which was not a termination notice, but merely a request for permission to cancel the FSAs without penalties and the respondents labeling the said notice as a "termination notice" to facilitate retrospective termination, which is wrong and unethical. He further submits that retrospective termination is not permissible under the FSAs or the Indian Contract Act, 1872 and the termination should follow the procedure outlined in Clause 17.2 of the FSA, which was not followed in the present case, hence, the action on the part of the respondents to terminate retrospectively is illegal and arbitrary. It has been contended that the FSA continued in effect until the date of communication of termination decision on 04.06.2021, and lock-in period of 2 years had already expired by that time, therefore, there is no basis for retrospective termination from 18.03.2020 when the actual

decision to terminate was made on 04.06.2021. It has been further contended that Clause 17.1 of the FSA stipulates that forfeiture of the Security Deposit is not applicable, if there is a default on the part of the seller, and in the case at hand, the respondents were in default in supplying coal the coal, thus, they cannot forfeit the petitioner's Security Deposit in violation of Clause 17.1 of the FSA. It has been further contended that the respondent authorities misinterpreted the letter dated 03.03.2020 as a partial acceptance and partial rejection at their discretion is illegal and arbitrary because an offer must be accepted without conditions for a valid acceptance. It has been submitted that rejection of request for refund of the Performance security and advance payments were contradicts the earlier undertaking given by the SECL before this Court while passing an order in WPC No. 2863 of 2023, where they assured for conducting financial reconciliation within 45 days if the petitioner approached them and the said conduct may constitute contempt of Court for providing false undertakings. It has been further submitted that imposition of compensation bills is challenged on the grounds that the un-lifted quantity of coal was not supplied due to the respondent's fault in delivering coal within a reasonable time after allotment, but the respondents are penalizing the petitioner for the said act, which is illegal and violates the explicit terms of the FSAs. It has been argued that while deciding the representation, the respondents have not considered genuine hardship faced by the petitioner due to inordinate delay in actual supply of coal, which were

beyond control for its inability to lift all the allotted rakes. It has been further argued that the respondents have sent notice of termination on 04.06.2021 after sitting on the petitioner's request for more than 15 months, and thereafter terminated the FSA with retrospective effect, i.e. from 18.03.2020, which is illegal and contrary to the provisions of the FSA as well as general Contract Law. As such, he prayed that petition be allowed and respondents are directed to refund the bank guarantee deposited by the petitioner in accordance with terms of FSAs.

16. On the other hand, Ms. Astha Shukla, learned counsel appearing for respondents No.1 to 6, has submitted that being aware of the fact that the termination may lead to forfeiture of the Security Deposit, the petitioner sought permission to cancel the same in view of the specific provision i.e. Clause 17.1, which speaks about invocation of Performance security in case of termination of agreement during the Lock-in Period of 2 years for any reason other than on account of seller's default. She further submits that instant petition is liable to be dismissed on the grounds that various disputed facts has been raised by the petitioner, which cannot be adjudicated in a writ proceeding under Article 226 of the Constitution of India. It has been contended that contractual dispute has been involved in the instant case, which cannot be adjudicated in a writ petition because scope of interference in contractual disputes is very limited and the remedy for the petitioner lies before the competent Civil Court. It has been further contended that vide letter dated 26.09.2022, the petitioner was invited for

finalizing/signing the financial reconciliation for settlement of dues, but the petitioner visited the SECL office on 25.08.2023 and initiated discussions on their letters No. RTM/SECL/1254 dated 10/21.08.2023 and RTM/SECL/ dated 25.08.2023 and after appreciating the arguments and perusing the letters of the petitioner dated 10/21.08.2023 and 25.08.2023, the respondent SECL in light of the provisions of the FSAs, passed a reasoned order dated 13.10.2023, which is well merited order and does not call for any interference.

17. Mr. Ramankant Mishra, learned Deputy Solicitor General, appearing for respondent No.7 adopted the submissions advanced by learned counsel appearing for respondents No.1 to 6.

18. We have heard and considered the submissions of the learned counsel appearing for the parties and have perused the materials on record.

19. Before proceeding further, it would be appropriate to extract relevant provisions of the FSAs, which are reproduced below for easy reference :-

> *"**Clause 4.1**-The Purchaser has submitted the Performance Security to the Seller in accordance with the provisions of the Scheme Document. The amount of Performance Security is and shall continue to be for a value computed as per the following formula: Performance Security Annual*

Contracted Quantity] multiplied by 16% of the aggregate of the Notified Price (or the latest Indexed Notified Price, as the case may be) and Winning Premium).

20. Clause 8.1 of the FSA pertaining to "Order Booking by Rail" and specifically to Clause 8.1.2 which inter-alia states that “Once the rake is allotted, it shall remain valid for supply as per prevailing railway rules.” Clause 8.1.4 states that "The wagons shall be booked on "freight to pay" or "freight pre-paid" basis, as applicable based on arrangements made by the Purchaser with the railways in this regard."

*“**Clause 10-** "Transfer of Title states that "Once delivery of the Contracted Grade of Coal has been effected at the Delivery Point by the Seller, the property, title and risk in/ of the Contracted Grade of Coal so delivered shall stand transferred to the Purchaser in terms of this Agreement. Thereafter, the Seller shall in no way be responsible and/or liable for the security or safeguard of the Contracted Grade of Coal so transferred. The Seller shall have no liability whatsoever, including towards increased freight or transportation costs, as regards any diversion of wagons/ rakes/road transport en-route for whatever causes, by the railways, road transporter and/or any other agency."*

***Clause 17.1 Lock-in period-** "Notwithstanding anything contrary contained in this agreement, the parties shall not be*

allowed to terminate this agreement for a period of 2 (two) years from the Signature Date ("Lock in Period") for any reason whatsoever, In the event that the purchaser terminates the agreement prior to expiry of the Lock-in Period for reasons other than on account of the seller's default, the seller shall be entitled to invoke Performance security in its entirety and the purchaser shall be disqualified from participating in the immediately subsequent tranche of any auction for the non-regulated sector conducted by CIL."

21. It is an admitted position that in terms of Clause 5.8.1(a) & 5.8.1(b) of the FSA, the qunatity cancelled by the petitioner will be treated as “Deemed Delivered Quantity”. Clause 5.8.1(a) & 5.8.1(b) is reproduced below:-

*“**Clause 5.8.1(a)-** "the quantity of the Contracted Grade of Coal not supplied by the Seller owing to omission or failure on the part of the Purchaser to submit in advance the designated rail program(s) to the Seller as per agreed time- table with respect to the Scheduled Quantity in accordance with the Clause 8.2"*

***Clause-5.8.1(b)-** "the quantity of the Contracted Grade of Coal not supplied by the Seller owing to cancellation, withdrawal, or modification of the rail program(s) by the*

> *Purchaser after its submission whether before or after allotment of wagon(s) by Railways."*

22. It is a well settled law that the writ Court will not normally entertain a petition with regard to contractual disputes, particularly if there are disputed questions of fact. Although there is no absolute bar on adjudication of contractual disputes in a writ petition, the circumstances in which such a writ petition can be entertained have been elucidated by the Supreme Court, inter alia, in the judgment in ***Joshi Technologies International Inc. vs. Union of India*** reported in ***(2015) 7 SCC 728*** as follows:

> *"69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:*
>
> ***69.1. The Court may not examine the issue unless the action has some public law character attached to it.***

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. ***If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.***

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in Performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the

conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific Performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due

weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

71. Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded."

23. In ***Union of India vs. Puna Hinda*** reported in ***(2021) 10 SCC 690***, the Supreme Court has crystalised relatively narrow grounds in which petitions under Article 226 of the Constitution would be the appropriate remedy in a contractual matter, inter alia, in the following terms:

> *"24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact.* ***Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised.*** *Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads."*

24. In the matter of ***Andhra Pradesh Pollution Control Board vs. CCL Products (India) Limited*** reported in ***(2019) 20 SCC 669***, the

Hon'ble Supreme Court while dealing with the issue of bank guarantee, held as under:-

> *"15. We are unable to subscribe to the legal position which has been formulated by the Tribunal. A bank guarantee constitutes an independent contract between the issuing bank and the beneficiary to whom the guarantee is issued. Such a contract is independent of the underlying contract between the beneficiary and the third party at whose behest the bank guarantee is issued.*
>
> *16. The principle which we have adopted accords with a consistent line of precedent of this Court. In* ***Ansal Engineering Projects Ltd. v Tehri Hydro Development Corporation Ltd., (1996) 5 SCC 450,*** *a three judge Bench of this Court held thus:*
>
> > *"4. It is settled law that bank guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary. Unless fraud or special equity exists, is pleaded and prima facie established by strong evidence as a triable issue, the beneficiary cannot be restrained from encashing the bank guarantee even if*

dispute between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in Performance of the contract or execution of the works undertaken in furtherance thereof. The bank unconditionally and irrevocably promised to pay, on demand, the amount of liability undertaken in the guarantee without any demur or dispute in terms of the bank guarantee…

5. …The court exercising its power cannot interfere with enforcement of bank guarantee/letters of credit except only in cases where fraud or special equity is prima facie made out in the case as triable issue by strong evidence so as to prevent irretrievable injustice to the parties."

17. The same principle was followed in State Bank of India v Mula Sahakari Sakhar Karkhana Ltd., (2006) 6 SCC 293, where a two judge Bench of this Court held thus:

"33. It is beyond any cavil that a bank guarantee must be construed on its own terms. It is considered to be a separate transaction.

34. If a construction, as was suggested by Mr Naphade, is to be accepted, it

would also be open to a banker to put forward a case that absolute and unequivocal bank guarantee should be read as a conditional one having regard to circumstances attending thereto. It is, to our mind, impermissible in law."

18. A bank guarantee constitutes an independent contract. In Hindustan Construction Co. Ltd. v. State of Bihar, (1999) 8 SCC 436, a two judge Bench of this Court formulated the condition upon which the invocation of the bank guarantee depends in the following terms :

"9. What is important, therefore, is that the bank guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished. The terms of the bank guarantee are, therefore, extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the

terms of the bank guarantee, or else, the invocation itself would be bad."

(Emphasis supplied)

19. The settled legal position which has emerged from the precedents of this Court is that absent a case of fraud, irretrievable injustice and special equities, the Court should not interfere with the invocation or encashment of a bank guarantee so long as the invocation was in terms of the bank guarantee.

20. In the present case, the bank undertook to the appellant that it would pay the guaranteed amount on demand, subject to the overall amount stipulated in each of the three bank guarantees. It was not for the bank to determine as to whether the invocation of the bank guarantees was justified so long as the invocation was in terms of the bank guarantee. A demand once made would oblige the bank to pay under the terms of the bank guarantee. The State Bank of India correctly understood its legal obligations and paid over the amount to the appellant. In this view of the matter and having regard to the terms of the bank guarantees, we are of the view that the principle of law which has been formulated by the Tribunal cannot be accepted as reflecting the correct legal position.

21. That apart, we are unable to accept the finding of the Tribunal that the respondent was kept in the dark on the invocation. It is evident that following the invocation of the bank guarantees, the respondent itself addressed a communication on 20-09-2012 to the Member Secretary of the appellant. The communication contains a specific reference to the invocation of the bank guarantees. That apart, it is evident from the material on the record that the appellant had issued a notice to show cause to the respondent to which the respondent also submitted a response. The purpose and object of the bank guarantees was to enable the appellant to secure compliance with environmental standards prescribed in accordance with law. The appellant has invoked the bank guarantees issued by the respondent because of the failure of the respondent to discharge the obligations imposed upon it by the Task Force Committee on 26-08-2011.

22. For the above reasons, we are of the view that the Tribunal has erred in interfering with the invocation of the bank guarantees and in directing the appellant to refund the amount of Rs 25 lakhs covered by the three guarantees. While invoking the bank guarantees, the appellant has clearly adverted to the fact that the status of

compliance was reviewed in the Task Force Committee Meeting; and that the officials of the appellant had inspected the industry and had observed certain violations. The invocation of the bank guarantees was therefore in terms of the conditions stipulated in the bank guarantees."

25. Perusal of the record would show that this is a third round of litigation. Earlier, the petitioner has filed a writ petition bearing WPC No.2863 of 2022 before this Court, which was disposed of vide order dated 13.07.2022 observing as follows :

"5. Mr. Singhal submits that in view of the letter dated 11.07.2022, the petitioner will appear before the General Manager (Sales and Marketing), as directed. He submits that since the petitioner had submitted a representation for settlement of dispute in terms of the clause 16 of the FSAs, the respondents may be directed to consider the plea urged by the petitioner that the retrospective termination of the FSAs is not permissible in law.

6. Mr. Shukla submits that financial reconciliation, as indicated in the letter dated 11.07.2022, would also include that aspect of the matter.

7. In view of the above submission of Mr. Shukla, Mr. Singhal submits that there is no

surviving cause of action in the writ petition and accordingly, the same may be closed.

8. Having regard to the submissions of the learned counsel for the parties, taking note of their submissions, the present writ petition is disposed of."

26. Thereafter, again a writ petition bearing WPC No.2895 of 2023 before this Court, which was dismissed as withdrawn vide order dated 30.10.2023. The said order is reproduced herein-below for easy reference:-

"1. Learned counsel for petitioner submits that after filing of writ petition, respondents have taken decision on the representation of petitioner and rejected the same. Hence, he may be permitted to withdraw this writ petition with liberty to challenge the decision taken by respondents on the representation of petitioner.

2. In view of above submission of learned counsel for the petitioner, this writ petition is dismissed as withdrawn with liberty as prayed for."

27. Considering the overall facts and circumstances of the case as well as arguments advanced on behalf of the respective parties and in the light of aforementioned judgments of the Hon'ble Supreme Court, we are of the considered opinion that it is well settled law that 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 at 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, the 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.

28. On consideration of the materials on record, we find that the respondent authorities has not committed any illegality in passing the impugned order dated 13.10.2023 and the decision of the respondent authorities cannot be said to be unjustified or unwarranted as being aware of the fact that the termination may lead to forfeiture of the Security Deposit, the petitioner sought permission to cancel the same in view of the specific provision i.e. Clause 17.1.

29. Concludingly, in our considered opinion, the petitioner has miserably failed to make out a case for interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India within the four corners of law and yardsticks set out by Their Lordships of the Supreme Court in the above-quoted judgments. We accordingly, hold that there is no reason to exercise the power of judicial review in

this instant matter, as the petitioner has not been able to demonstrate arbitrariness, unfairness, illegality, irrationality or unreasonableness in the impugned order dated 13.10.2023.

30. As a fallout and upshot of the above-stated legal discussion, the writ petition is devoid of merit and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Anu

HEADNOTE

Ordinarily the Court should not interfere with the invocation or encashment of a Bank guarantee so long as the invocation is in terms of the Bank guarantee.