

(2018) 05 JH CK 0080

In the Jharkhand High Court

Case No : Writ Petition (C) No.5329, 4426 of 2017 With I.A. Nos. 6854, 7489, 7491 & 9236 of 2017

Adhunik Power and Natural Resources Ltd

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 162, 226
Indian Contract Act, 1872 — Section 5
State Financial Corporation Act, 1955 — Section 3
Indian Telegraph Act 1885 — Section 25

Citation : (2018) 05 JH CK 0080

Hon'ble Judges : RAJESH SHANKAR, J

Bench : Single Bench

Advocate : Sumeet Gadodia, H. S. Dhankar, A.K. Das, Gautam Rakesh, Jalisur Rahman

Final Decision : Dismissed

Judgement

Rajesh Shankar, J

1. In W.P.(C) No.5329 of 2017 the petitioner prays for the following reliefs:-

(i) For declaring the action of the Respondent-Central Coal Fields Ltd. (for short CCL) in forfeiting the Earnest Money Deposit (EMD)/Security

Deposit of the petitioner in respect of 225 rakes of coal amounting to Rs. 9,72,00,000/- as being wholly arbitrary, illegal, unreasonable and contrary to

the Special Forward e-auction Scheme for power producers 2016-17, Phase III held on 25.8.2016;

(ii) For issuance for an appropriate direction upon the respondent-CCL to extend the last date of deposit of coal value and validity period of supply of

coal from 31.7.2017 to 31.03.2018 or for a period of 8 months i.e the period in

which no supply of coal was made to the petitioner and other bidders pursuant to Phase-III auction;Â

(iii) For quashing the notice dated 17.07.2017 by which the petitioner was directed to deposit the coal value of the balance rakes load of coal by 31.07.2017 or else it was stated in the notice that action would be initiated as per the terms and conditions of the Special Forward e-auction Scheme; andÂ

(iv) An alternative prayer has been made for issuance of a writ of mandamus directing the Respondent-CCL to immediately and forthwith refund the EMD amount forfeited by Respondent-CCL in respect of 225 rakes load of coal amounting to Rs. 9,72,00,000/-.

2. In W.P.(C) No.4426 of 2017, the petitioner prays for the following reliefs:-Â

(i) For issuance of an appropriate writ/order/direction, including Writ of Mandamus, directing the Respondents, particularly respondent No. 4-Central Coalfields Limited to immediately and forthwith refund the proportionate amount of Earnest Money Deposit/Security Deposit submitted by the petitioner towards Special Forward e-auction For Power Producers-2016-17, Phase-VII amounting to Rs.3,36,96,000/- in terms of Clause 14.3 of the terms and conditions of the Special Forward e-auction Scheme especially because the respondent-CCL has failed to offer part of the monthly scheduled quantity of coal to the petitioner within the validity period; andÂ Â

(ii) For issuance of further appropriate writ/order/direction, including writ of mandamus restraining the respondentsâ?? particularly respondent no. 4 from taking any steps whatsoever for forfeiture of the proportionate EMD/ Security Deposit submitted by the petitioner pursuant to the auction held under the Special Forward e-auction for Power Producers-2016-17, Phase-VII, especially because it was the respondent-CCLÂ who failed to offer part of the monthly scheduled quantity of coal to the petitioner within the validity period.

3. Since the issues involved in these writ petitions are similar, the same have been heard together and being decided by this common judgment.

W.P.(C) No.5329 of 2017:

4. The factual background of the case as stated in the writ petition is that the respondent-CIL pursuant to the guidelines issued by the Government of

India, through Ministry of Coal dated 15.10.2015 formed a scheme popularly known as "Special Forward e-auction Scheme for Power Producer

(in short "the Scheme") and the same was adopted by the respondent-CCL. The respondent-CCL published notice dated 21.07.2016 inviting

auction for supply 380 rakes of Coal from North Karanpura Colliery having its railways siding being "KD Old Siding" of G-10 Grade of Coal

(subsequently increased to 610 rakes of coal) to Power Producer under the Scheme, termed as e-auction Phase-III pertaining to supply of coal from

the month of August 2016 to January 2017 for which the validity period of lifting of Coal against the successful quantity was prescribed as 12 months

i.e from August 2016 to July 2017. The petitioner participated and was declared successful in the auction and was allotted 350 Rakes of coal to be

supplied by the CCL. The petitioner submitted its schedule of monthly quantity of coal which it intended to lift within the identified period of 12 months.

The petitioner made payment for 39 rakes of coal in the month of April, 2017 and it was supplied 21 rakes of coal in the said month. In the month of

May, 2017, the petitioner deposited payment for 43 rakes of coal, however, it was supplied 25 rakes of coal in that month. In the month of June, 2017,

the petitioner deposited payment for 23 rakes of coal however it was supplied 17 rakes of coal in that month. In the month of July 2017, the petitioner

deposited payment for 20 rakes of coal and it was supplied 22 rakes of coal. Thus, the total rakes of coal supplied to the petitioner were 85 rakes

against the deposit of coal value of 125 rakes. The CCL issued a general notice dated 17.07.2017 to the successful bidders under e-auction Phase-III

directing them to deposit the payment for the coal value till 31.07.2017 or else it was stated, inter alia, that action would be initiated as per terms and

conditions of the said scheme. The petitioner, thereafter, filed a representation before the respondent authorities on 19.07.2017 and 24.07.2017 as well

as the representation dated 28.08.2017 requesting them to extend the validity period for lifting of coal for Phase-III auction till March, 2018, however,

the respondent-CCL proceeded to forfeit the EMD of Rs.9,72,00,000/- deposited by the petitioner in respect of balance 225 rakes of coal on the

ground that the petitioner has not deposited 100% coal value of the said rakes of coal within the stipulated time i.e till 31.07.2017.

5. The learned counsel for the petitioner has assailed the impugned action of the respondent-CCL on the following grounds:-

(a) The impugned order has been passed in violation of principles of natural justice as neither any notice to show cause was issued nor any opportunity

of hearing was given to it before passing of the order of forfeiture of EMD. In fact, the petitioner has come to know the fact of forfeiture of EMD

only through the counter affidavit of the respondent-CCL filed in another writ petition being W.C No. 4426 of 2017.

(b) E-auction Phase-III was not only invited by the CCL alone but also by the other subsidiary of Coal India Limited (in short 'CIL') and similar

problem of delay in supply coal had occurred and under the said circumstance, the CIL extended the validity of the scheme in respect of other

subsidiaries including South East Coal Fields Ltd and Western Coalfields Ltd.

(c) The respondent -CCL in most arbitrary manner and actuated by malice in law has failed to extend the validity period of e-auction Phase-III despite

the fact that due to the reasons attributable to the respondent-authorities of CCL themselves, loading of coal pursuant to e-auction Phase-III could not

commence within the stipulated time which commenced only after a delay of 8 months i.e from April, 2017.

(d) The respondent-CCL instead of making recommendation for extension of the validity period of e-auction Phase-III, has proceeded to forfeit the

EMD/Security Deposit of the petitioner for the balance of 225 rakes of coal on the alleged pretext that the petitioner has not deposited 100% coal

value of the said rakes of coal. The said action pertaining to forfeiture of the EMD of the petitioner is wholly arbitrary, unreasonable, whimsical and

contrary to clause 14.3 of the Scheme.

(e) After allotment of coal, the petitioner had submitted the monthly scheduled quantity of supply of coal on month wise basis commencing from

October, 2016 and the same was duly approved by the CCL. However, due to non-availability of coal at K.D Old Siding from which coal was to be

supplied to the petitioner, there was no commencement of supply from the said siding for e-auction Phase-III and as such the petitioner filed

representations dated 23.10.2016 and 21/22.11.2016 before the respondents-CCL and CIL requesting therein for extending the validity period of lifting

of coal from July, 2017 to January, 2018 assuming that the supply of coal from the K.D Old Siding would commence at least from January, 2017.

(f) In-spite of the repeated request of the petitioner, neither the validity period of

lifting of coal of e-auction Phase III was extended by the respondent-

CCL nor it took steps to expedite the supply of coal. The petitioner was compelled to revise its monthly schedule of coal and ultimately vide its letter

dated 31.01.2017, requested the CCL to supply the successful bid quantity of coal to the petitioner commencing from March, 2017.

(g) Immediately when the first loading was started from the month of April, 2017, the petitioner filed representation dated 18.04.2017 before the

respondent-CCL/CIL and requested for extending of the validity period of lifting of coal and payment schedule from July, 2017 to March, 2018 stating

that there is an abnormal delay of 8 months in supply of coal pursuant to e-auction Phase-III, however, the respondents did not pay any heed to the

representation of the petitioner in spite of noting in file made by the Deputy Manager (M & S Oprn.) of CCL.Â

(h) From April, 2017 to July, 2017, the petitioner deposited the coal value of 125 rakes, however the respondent-CCL supplied only 85 rakes of coal

and as such they could not supply the balance 40 rakes of coal till the validity period.

(i) The respondent-CCL is trying to unjustly enrich itself with the money of the consumers compelling them to deposit the entire coal value with the

threat of forfeiture of earnest money deposit and is consequentially not supplying the coal within the stipulated time to the said consumers and is

enjoying interest over the money deposited by the consumers for an indefinite period.Â

(j) Approximately Rs.42 crores and Rs.9 crores respectively have been deposited by CESC Limited and Prayag Raj Power Limited before 31.07.2017

and the entire Rs.51 crores is lying with the CCL and not even a single rake of coal has been supplied to the said entities in spite of deposit of Rs.51

crores with the CCL, which shows the mala fide act of the CCL.

(k) If the petitioner had deposited Rs.180 crores approx. on or before 31.07.2017 being the amount towards 100% value of 225 rakes of coal, it would,

like other consumers be still waiting for supply of coal by the CCL and its entire money of Rs.180 crores would have been blocked with the CCL.Â

6. It is further submitted by the learned counsel for the petitioner that the delay in supply of coal was made by the respondent-CCL owing to several

factors and reasons solely attributable to CCL which are detailed as follows:-

(a) Mines from which the coal is extracted by the respondent CCL is situated at some distance from its railways siding and the coal is to be

transported from the mining area to the railways siding.

(b) CCL had not taken preparatory steps for ensuring availability of coal at railways siding and the tenders were invited for transportation of coal for

making the same available at the railways siding after much delay.

(c) Even the Grade of coal for which the auction was conducted was not available in the mining area of CCL which is evident from the fact that the

petitioner was declared successful bidder for G-10 Grade of Coal but the CCL as late as on 22.04.2017, requested the petitioner to give consent for

lifting of lessor Grade of Coal i.e G-11 Grade which was also accepted by the petitioner vide letter dated 04.05.2017.

(d) The CCL has discriminated amongst the auction bidders while supplying the coal available at the railways siding and has given priority to supply

coal to National Thermal Power Corporation ignoring the schedule of supply of coal to the petitioner.Â

(e) The CCL, prior to e-auction Phase-III, had invited e-auction Phase-II in which the coal was to be supplied in the month of June and July, 2016

with an outer limit for supply of coal till December, 2016. The supply of coal under e-auction Phase-II which was to be completed by December, 2016

was completed only in the month of March, 2017. Under e-auction Phase-II, the coal was also to be supplied from K.D Old Siding which was also

identified for supply of coal in e-auction Phase-III.Â

(f) Since admittedly there was delay in supply of coal for e-auction Phase-II, the last date of payment of coal value for e-auction Phase-II which was

initially till 31.12.2016, was extended till 10.03.2017 vide letter dated 27.02.2017. Moreover, the time was further extended for deposit of payment of

coal value up to 10.04.2017 in e-auction phase II in respect of K.D Old Siding. Mere fact that extension of time was granted for e-auction phase-II by

CCL, itself clearly demonstrates that e-auction phase-II was delayed which has, in result, delayed commencement of supply of coal in respect of e-

auction phase-III.Â

7. Learned counsel for the petitioner puts reliance on the following judgments:-Â

(i) Umesh Kumar Vs. State of Andhra Pradesh, reported in (2013)10 SCC 591;Â

- (ii) R. M. Malkani Vs. State of Maharashtra, reported in (1973)1 SCC 471; and
- (iii) Madhu Vs. State of Karnataka, reported in (2014)12 SCC 419.

8. Per Contra the learned senior counsel appearing on behalf of the respondent-CCL has advanced the following argument:-

(a) Since very inception the petitioner had not been regular in depositing the coal value though it was allotted 350 rakes of coal which was to be lifted

by it between August, 2016 to July, 2017. As per the monthly scheduled quantity (in short 'MSQ') submitted by the petitioner vide letter dated

21.10.2016, it sought no rakes in the months of October, 2016 and November, 2016. Further, vide letter dated 21.10.2016 it revised the MSQ and

sought no rakes in first four months and vide letter dated 27.11.2016, it revised the MSQ and sought no rakes till December 2016. Lastly, vide letter

dated 31.01.2017, the petitioner revised the MSQ by declaring that it required no rakes till February 2017. Thus the petitioner itself opted to receive

'NIL' supply for seven months.

(b) The supply of coal could have commenced only if the petitioner had deposited the value of coal. The petitioner for the first time deposited the value

of coal in February, 2017 and therefore naturally for the said value, the supply of coal commenced in March, 2017 and as such there was no delay on

the part of the respondent-CCL in making supply of coal, rather the delay was on the part of the petitioner in depositing the value of coal.

(c) The petitioner in place of 350 rakes of coal bided by it, could deposit the value of only 125 rakes and as and when the rakes were placed by the

transporter i.e. the Railways, the coal was supplied to it. In consequence of the deposition of coal value by the petitioner, the respondent-CCL

effected consequential sanction leading to allotment of rakes. The petitioner committed default in depositing 100% of the coal value and by committing

such default, it has made itself liable to face consequences provided under the scheme and thus such consequential cannot be said to be suffering from

any illegality whatsoever.

(d) As per applicable modalities of Special Forward e-auction for 2016-17 for Power Producers-Phase-III, in the context of supply by rail mode, the

stipulation is 'supply will be made as per extant rules of Railways'. The action taken by the CCL is in complete conformity with the requirement

of the scheme. Clause 11.2.3 of the Scheme stipulates that once the rake is

allotted, it would remain valid for supply of coal as per prevailing Railways

Rules, thus the allotment of rakes had non lapsable character. After the rakes are placed, information is given by the Railways which is duly entered in

a register maintained for the purpose and the register would show that within few hours of placement of rakes, coal has been supplied. The petitioner

has nowhere mentioned as to on which date it had booked the rakes by depositing the requisite fees to the Railways. Coal has always been available

at the stockyard of the concerned mines and as and when the rakes of a particular customer are placed, the coal is loaded on it. In cases of

transportation by road, the responsibility is of the customer to lift the coal within the validity period of auction.Â

(e) Clause 14.3 of the Scheme applies wherein there has been deposition of the coal value for the MSQ and the successful bidder is willing to lift the

quantity, yet there is failure on the part of the coal company in offering a part or full of the MSQ of the bidder within the stipulated validity period.

Clause 14.3 of the Scheme provides no protection to a bidder who fails on the point of deposition of coal value. Concededly, the petitioner failed to

deposit of coal value for 225 rakes and in that event forfeiture of EMD automatically comes in play in terms of Clause 14.1 of the Scheme.Â

(f) The contention of the petitioner regarding not providing 10 daysâ?? show cause notice as per Clause 8.3 of the scheme is liable to be rejected as

the requirement of providing 10 daysâ?? notice is applicable in the case of Bank Guarantee which concerns the conversion of EMD into a Security

Deposit. However, the present case relates to forfeiture of EMD/BG/Security Deposit and the situation is covered under Clause 14 of the Scheme. It

is further contended that the application for extension of time was contrary to the scheme and the last date of deposit of the value of coal was already

stipulated as per the scheme which is uniformly applicable to all the participants. In absence of any enabling provision, the petitioner could not have

demand extension of validity period of the contract as well as extension of last date of depositing the coal value. The petitioner at the time of

participation in the contract was aware of the period during which it was required to deposit the coal value and having full knowledge of the said fact,

it participated in the e-auction Phase-III and undertook to deposit the value of coal bidden by it by 31st July, 2017 and in support of its commitment, it

deposited the security money which in the event of such failure, automatically became liable to be forfeited and thus the same has rightly been

forfeited by the respondent-CCL. It is also contended that for e-auction Phase III, the petitioner is the sole defaulter as all other successful bidders

have effected total deposition of the coal value prior to the cut-off date i.e. 31.07.2017. Any extension in such a situation would amount to bestowing

indulgence on a single entity. Such a course is antithetical to the scheme and declared precedential law. It deserves to be significantly noticed that

Clause 16.9 of the Scheme expressly stipulates that CIL/Coal Company reserves its rights to amend/modify the terms and conditions contained therein

in full or in part at any point of time and no party shall have any right whatsoever to raise any claim on that count.Â

(g) The petitioner has not taken recourse to the effective, efficacious mechanism of dispute resolution by way of arbitration as per clause 17 of

Special Forward e-auction scheme for Power Producers 2016-17 Phase-III.

(h) The coal was to be lifted by the petitioner through rail mode from KD Old siding. The feeder mines of KD Old Siding are Ashoka Project and

Piparwar Project. There was sufficient quantity of coal available in the stock of both the mines and, thus, had the petitioner deposited requisite value

of coal, the same would have definitely been delivered to it.Â

(i) The delay in commencing the supply of coal occurred due to delay on the part of the petitioner in depositing the value of coal which under the

scheme is required to be deposited in advance. So far as the allegation of the petitioner that the respondent-CCL delayed even in supplying 125 rakes

of coal for which entire payment was made, the said delay is not on the part of the respondent-CCL as for supply of coal through rail mode, the

loading of coal can be effected only when the wagons are placed at the respective sidings. Perusal of the register annexed by the respondent-CCL

with the counter affidavit would show that as and when the rakes were placed by the railways, the loading was made. Had the petitioner deposited the

value of coal of entire 350 rakes, the supply would have definitely been made by it as there was sufficient quantity of coal available in the stockyard of

the respective mines from where supply was to be made. In the e-auction, only such quantity of coal is put on auction and is allocated which is

available with the coal company and therefore the allegation of the petitioner is

baseless and misleading.Â

(j) The petitioner had been given an option to accept G-11 Grade coal if the same suited it, to which the petitioner agreed.

(k) The CCL has never recommended for extension of time rather a Deputy Manager posted in the Headquarters prepared a note-sheet on the

representation of the petitioner which does not create any right in favour of the petitioner. Facts in the note sheet were not found to be in consonance

with the actual facts, rather it was found that the petitioner has failed to deposit the value of coal and therefore question of extension does not arise.Â

(l) The validity period of deposit of coal value under the special forward e-auction scheme, Phase-II 2016-17 has been extended at the instance of

CIL due to difficulty faced by all the customers in depositing the coal value due to demonetization enforced by the Central Government during the

relevant period. The same being a policy decision of the CIL was uniformly made applicable to all the customers under the said e-auction

scheme.Â Â Â

9. The respondent-CCL by way of an affidavit dated 12.02.2018 has replied to the counter affidavit of the Railways. It has been stated inter alia that

the coal companies enter the details of the customers, the destination and number of rakes sanctioned and make request for allotment of rakes in the

website www.fois.indianrail.gov.inÂ on the Railways. Based on the entries made by the coal companies and on receipt of payment by the customers

for booking of coal against transportation by rail mode, the Railways as per availability of the rakes, make allotment of rakes in terms with the extant

rules. The supply of rakes is as per the convenience of the Railways and the Coal Companies have no role in the same. Moreover, depending upon the

constraints of traffic movement on existing railways tracks, the rakes are allowed to move in limited number to various destinations which is decided

by the railways authorities independently.Â

10. The learned senior counsel appearing on behalf of the respondent CCL puts reliance on the following judgments:

(i) Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond and Gem Development Corporation Ltd. and Anr.,

reported in (2013) 5 SCC 470.Â

(ii) State of Kerala Vs. M.K Jose, reported in (2015) 9 SCC 433.Â

(iii) Global Energy Ltd. & Another Vs. Adani Exports Ltd. & Ors., reported in (2005) 4 SCC 435.Â

(iv) Gujrat State Financial Corporation Vs. Lotus Hotel (P) Ltd., reported in (1983)3 SCC 379.Â

(v) Union of India Vs. Ashok Kumar Agarwal, reported in (2013) 16 SCC 147.

(vi) Sethi Auto Service Station Vs. DDA, reported in AIR 2009 SC 904.

(vii) Jasbir Singh Chhabra Vs. State of Punjab, reported in (2010) 4 SCC 192.

(viii) Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Ors., reported in (2010) 9 SCC 437

11. Learned counsel for the respondent-Railways submits that the Railways have no information regarding availability of the coal at the loading point

and are also not required to have any such information. The rakes are supplied by Railways as per their own availability of rakes and this issue is in

the realm of functioning between the petitioner and the Railways. The only assigned role to the coal company is to indicate the Railways about the

allocation of coal in favour of the bidder fulfilling the financial requirement in that behalf. Thereafter, the issue is between the bidder and the Railways.

The role of the coal company thereafter starts with the availability of the rakes at the loading point. If any delay is caused, the coal company is liable

for demurrage.

12. The learned counsel for the respondent-Railways further submits that for the purpose of dispatch of coal from railways siding to different

consumers, necessary monthly programme is sanctioned by the Railways against online programme submitted by the consumers and based on the

sanctioned programme, a day to day demand is registered by the coal company on the official website of Railways for day to day allotment of rakes

for loading of coal. The coal companies furnish daily, monthly, bi-monthly, quarterly loading potential of each colliery siding. Day to day planning of

supply of allocated rakes for loading of coal from colliery siding is being planned by Railways in coordination with the coal companies considering the

daily potential furnished by the coal companies. Supply of rakes for day to day loading is being made available by the Railways on the basis of

availability of coal at the loading point and available coal stock of different power houses. The consumer has no role in planning the day to day supply

of rakes for loading. Railways has allotted rakes for loading of coal in favour of

the petitioner pursuant to sanction of the necessary programme between the periods 11.04.2017 to 21.07.2017.

13. Heard learned counsel for the parties and perused the materials available on record.Â

14. The respondent-CCL invited an auction for supply of coal under Special Forward e-auction Scheme termed as e-auction Phase-III pertaining to

supply of coal for the period from August 2016 to January 2017. The petitioner participated in the auction and was allotted 350 Rakes of coal to be

supplied by the CCL within the identified period of 12 months. Admittedly, till March, 2017, the petitioner did not make any payment for supply of coal

and only in the month of April, 2017 it made payment for 39 rakesÂ of coal against which it was supplied 21 rakes of coal. In the month of May,

2017, it deposited payment for 43 rakes of coal, however, it was supplied 25 rakes of coal. In the month of June, 2017, it deposited payment for 23

rakes, however, it was supplied 17 rakes of coal and in the month of July 2017, it deposited payment for 20 rakes of coal for which it was supplied 22

rakes of coal. Thus, total coal supplied to the petitioner was 85 rakes against the payment of coal value of 125 rakes. The CCL issued a general notice

dated 17.07.2017 to the successful bidders under e-auction Phase-III informing them to deposit the coal value till 31.07.2017 or else it was mentioned

that appropriate action would be initiated as per terms and condition of the scheme. However the petitioner did not deposit the total coal value in

pursuance of the general notice and as such the CCL forfeited the Earnest Money Deposit/Security Deposit of the petitioner in respect of 225 rakes

of coal amounting to Rs.9,72,00,000/- which gives rise to filing of present writ petition.Â

15. The learned counsel for the respondent has raised preliminary objection to the maintainability of the present writ petitioner by stating that the issue

involve in the present writ petition is contractual dispute and the alternative remedy is available to the petitioner by invoking the arbitration clause of

the scheme/contract.Â

16. Thus, before coming to the merit of the case, it would be appropriate to go through the judicial pronouncements of the Honâ??ble Supreme Court,

whereby the principles have been laid down to deal with the matters involving contractual dispute under Article 226 of the Constitution of India. In the

case of ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., reported in (2004) 3 SCC 553, the Honâ??ble Supreme Court has

held as under:-

â??27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition: (a) In an appropriate case,

a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

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

as a matter of rule.

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

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should

bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other

provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.

The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks.) And this

plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies

unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other

valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.â??

â?? In the case of Karnataka State Forest Industries Corpn. vs. Indian Rocks, reported in (2009) 1 SCC 150, the Honâ??ble Supreme

Court has held as under:-

â??38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that

when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be

maintainable. (See ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.).

39. There cannot be any doubt whatsoever that a writ of mandamus can be issued only when there exists a legal right in the writ petition and a

corresponding legal duty on the part of the State, but then if any action on the part of the State is wholly unfair or arbitrary, the superior courts are not

powerless. Reliance placed by Mr Divan on *G.J. Fernandez v. State of Mysore* is not apposite. In that case itself it was held:

“12. Thus under Article 162, the State Government can take executive action in all matters in which the legislature of the State can pass laws. But

Article 162 itself does not confer any rule-making power on the State Government in that behalf.”

“ In the case of *Central Bank of India v. Devi Ispat Ltd.*, reported in (2010) 11 SCC 186, the Hon’ble Supreme Court has held as under:-

“28. It is clear that (a) in the contract if there is a clause for arbitration, normally, a writ court should not invoke its jurisdiction; (b) the existence of

effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and

(c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of

Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist

and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise

their power. In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier

paragraphs.”

“ In the case of *Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers*, reported in (2008) 12 SCC 500, the Hon’ble supreme Court has held as

under:-

“18. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He will be entitled to the relief of

specific performance, if the contract is capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm

of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under Article 226 of the Constitution of India, is not

available to seek damages for breach of contract or specific performance of

contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 of the Constitution of India may be invoked.

23. If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the civil court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably in staying the operation of the allotment letter dated 26-3-2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is, whether the order of cancellation dated 24-4-2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a civil court. In other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full-fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The question whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action.â??â??

â??â??â?? In the case of Air India Statutory Corpn. v. United Labour Union,

reported in (1997) 9 SCC 377, the Honâ??ble Supreme Court held as under:-

â??60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and â??for any other purposeâ?. The distinction between public law and private law remedy by judicial adjudication gradually marginalized and became obliterated. In LIC v. Escorts Ltd. this Court (in SCC para 102, p. 344) had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the Stateâ??s power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in M.C. Mehta v. Union of India.

61. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law â?" be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B

(AIR para 5) that if the legal right of a manager of a company is denuded on the basis of recommendation by the Board of Management of the

company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In *Mulamchand v. State of M.P.* this

Court had held that even though the contract was void due to noncompliance of Article 229, still direction could be given for payment of the amount on

the doctrine of restitution under Section 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in

State of W.B. v. B.K. Mondal & Sons (AIR at p. 789) and in *New Marine Coal Co. (Bengal) (P) Ltd. v. Union of India*. In *Gujarat State Financial*

Corpn. v. Lotus Hotels (P) Ltd. a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the

doctrine of promissory estoppel. In *Mahabir Auto Stores v. Indian Oil Corpn.* contractual obligations were enforced under public law remedy of

Article 226 against the instrumentality of the State. In *Shrilekha Vidyarthi v. State of U.P.* contractual obligations were enforced when public law

element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in *Gillick v. West Norfolk and Wisbech*

Area Health Authority wherein the House of Lords held that though the claim of the plaintiff was negated but on the anvil of power of judicial

review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in *Roy (Dr) v.*

Kensington and Chelsea and Westminster Family Practitioner Committee the House of Lords reiterated that though a matter of private law is

enforceable by ordinary actions, a court also is free from the constraints of judicial review and that public law remedy is available when the

remuneration of Dr Roy was sought to be curtailed. In *LIC v. Consumer Education and Research Centre* this Court held that each case may be

examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law

remedy has now become thin and practically obliterated.â??

â??â??â?? In the case of *Union of India & Ors. Vs. Tania Construction (P) Ltd.*, reported in (2011) 5 SCC 697, the Honâ??ble Supreme Court has

held as under:-

â??33. Apart from the above, even on the question of maintainability of the writ

petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34. We endorse the view of the High Court that notwithstanding the provisions relating to the arbitration clause contained in the agreement, the High

Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the writ petition and also on its merits.â??

17. In the aforesaid judgments, the Honâ??ble Supreme Court has summarized the law with regard to the extent of interference by the writ court in

the matters arising out of contractual disputes. It has been held that the power of the High Court under Article 226 is plenary in nature. However, the

High Courts have imposed selfrestrain in the exercise of such power. Involvement of contractual dispute cannot ipso facto be a ground for dismissing

a writ petition. Even in a matter where money claim is made as a consequential relief, the same may also be entertained. Every matter in which some

public law element is involved and the State or its instrumentality has dealt with any private party, the State functionaries are expected to act in a fair

and reasonable manner. If from the facts of a case, it appears to the writ court that any authority of the State or its instrumentality has not acted in fair,

just and equitable manner, an appropriate relief may be granted to the aggrieved party.

18. I have also perused the judgments cited by the learned senior counsel appearing on behalf of the respondent-CCL. In the case of Rajasthan State

Industrial Development (Supra.), the Honâ??ble Supreme Court has been held as under:-

â??â??16. A party cannot claim anything more than what is covered by the terms

of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. (Vide: United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, AIR 2004 SC 4794; Polymat India P. Ltd.&Anr. v. National Insurance Co. Ltd. & Ors., AIR 2005 SC 286).

21. It is evident from the above, that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debitojusticie*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist

proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.â??

Â In the case of M.K Jose (Supra.) the Honâ??ble Supreme Court has held as under:

â??13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.

14. In State of Bihar v. Jain Plastics and Chemicals Ltd.⁶, a two Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated:Â

â??3. â?| It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.â??

Â In the said case, it has been further observed:Â

â??7. â?| It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the

alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs.â??

15. In *National Highways Authority of India v. Ganga Enterprises*, the respondent therein had filed a writ petition before the High Court for refund of the amount. The High Court posed two questions, namely, (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of breach of contract.

While dealing with the said issue, this Court opined that:Â

Â â??6. â?| It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in

Kerala SEB v. Kurien E. Kalathil, *State of U.P. v. Bridge & Roof Co. (India) Ltd.* and *Bareilly Development Authority v. Ajai Pal Singh*. This is

settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not

the proper forum. Mr Dave, however, relied upon the cases of *Veriganto Naveen v. State of A.P.*¹¹ and *Harminder Singh Arora v. Union of India*.

These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in

a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.â??

Â Â In the case of *Global Energy Ltd. & Anr. (Supra.)*, the Honâ??ble Supreme Court has held as under:-

â??10. The principle is, therefore, well settled that the terms of the invitation to tender are not open to judicial scrutiny and the Courts cannot whittle

down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice. This being the

position of law, settled by a catena of decisions of this Court, it is rather surprising that the learned Single Judge passed an interim direction on the very

first day of admission hearing of the writ petition and allowed the appellants to deposit the earnest money by furnishing a bank guarantee or a

bankersâ?? cheque till three days after the actual date of opening of the tender. The order of the learned Single Judge being wholly illegal, was,

therefore, rightly set aside by the Division Bench.â??

Â Â Â Â Â In the case of Kalabharti AdvertisingÂ (Supra.), the Honâ??ble supreme Court has held as under:-

â??25. The State is under obligation to act fairly without ill will or malice - in fact or in law. â??Legal maliceâ? or â??malice in lawâ? means

something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done

from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of

personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for

purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on

the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.Â

26. Passing an order for an unauthorized purpose constitutes malice in law.â??

Â Â Â Â Â In the case of Gujarat State Financial Corpn. (Supra.), the Honâ??ble Supreme Court held thus:-

â??9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the

parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for

which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late

in the day to contend that the instrumentality of the State which would be â?? other authorityâ? under Article 12 of the Constitution can commit

breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for

damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr Bhatt, it must be said that he did not

dispute that the Corporation which is set up under Section 3 of the State

Financial Corporation Act, 1955 is an instrumentality of the State and would be another authority under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In *Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P.* this Court observed as under:Â

Â The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.Â

Â 19. In the aforesaid judgments, the Honâble Supreme Court has held that a writ should not be issued unless it is established that there is an existing legal right of the petitioner as well as the corresponding duty of the respondent. A writ is equitable in nature and its issuance is governed by the equitable principles. Normally the court should not entertain a writ petition if there is a breach of contract involving disputed questions of fact. If an

alternative and equally efficacious remedy is available to the litigant, it should be required to pursue that remedy and not to invoke writ jurisdiction and

that would be a good ground in refusing to exercise the discretion under Article 226 of the Constitution of India. Though many matters could be

decided by appreciating the affidavits and counter affidavits filed by the parties in a writ proceeding, yet if serious disputed question of facts or rival

claims of the parties with regard to breach of contract are required to be determined on the basis of evidence which may be led by the parties in a

properly instituted case before efficacious forums, it would not be appropriate for the High Court to exercise prerogative of issuing writs. It has further

been laid down by the Honâ??ble Apex Court thatÂ a party cannot claim anything more than what is covered by the terms of the contract for the

reason that the contract is a transaction between two parties and has been entered into with open eyes and understanding the nature of contract.Â

20. The respondent-CCL is a government owned company and has been dealing with the petitioner under a scheme farmed by CIL under the

guidance of the Government of India, throughÂ Ministry of Coal namely Special Forward e-auction Scheme termed as e-auction Phase-III which is

certainly a matter involving public law element and as such this court in exercise of the power of judicial review can examine the action of the

respondent-CCL to ascertain as to whether the impugned action against the petitioner is fair, equitable and reasonable or it suffers from

arbitrariness.Â

21. The contention of learned counsel for the petitioner is that as per the terms and conditions of the allotment, the CCL had to start the supply of coal

in the month of August, 2016 itself, however, it could not start the supply within time due to lack of coal available at the coal siding. The petitioner

repeatedly requested the respondentCCL to extend the time schedule for depositing the coal value but the CCL kept idle. The case of the petitioner is

also substantiated by the subsequent act of the respondent-CCL as despite payment for 125 rakesÂ of coal by the petitioner, it could deliver only 85

rakes. In support of the contention the learned counsel for the petitioner has brought on record several documents. One document which has been

relied upon by the petitioner is a â??noteâ?? forwarded by the Dy. Manager (M&S-Opn.) of CCL. The relevant para of the note sheet is as follows:-

After withdrawal of dispatch under as is where basis scheme through KD(O) siding by Consortium of Consumers (COC) namely M/s

Rosa Power Supply Co. Ltd. and M/s Bajaj Energy Private resumed on 07.10.2016 and till 31.03.2017 only 118 rakes was loaded from the siding

including 17 rakes of power utilities. The avg. loading from the siding since resumption of loading till 31.03.2017 was about 0.7 rakes/day. Avg.

transportation to the siding during Nov. 16, Dec. 16, Jan 17, Feb 17 and March 17 is 1630, 2187, 2522, 1648 and 4630 tonnes/day respectively.

During 2017-18 till 21.07.2017 average transportation to the siding is about 10269 tonnes/day (equivalent to about 2.2 rakes/day) Till 21.07.2017 a total

of 266 rakes have been dispatched from improving due to local issues and other related factors.

Loading of rakes bid under Spl. Forward e-auction Phase-III started in April 2017 because of poor transportation of coal due to cited reasons.

22. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of Umesh Kumar

(Supra.) by submitting that even if the documents are procured by illegal means, the same may be admitted in evidence if it is relevant and its

genuineness is proved. I have perused the said the judgment cited by the learned counsel for the petitioner, wherein the Hon'ble Supreme Court

has held as under:-

35. It is a settled legal proposition that even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is

relevant and its genuineness is proved. If the evidence is admissible, it does not matter how it has been obtained. However, as a matter of caution, the

court in exercise of its discretion may disallow certain evidence in a criminal case if the strict rules of admissibility would operate unfairly against the

accused. More so, the court must conclude that it is genuine and free from tampering or mutilation. This Court repelled the contention that obtaining

evidence illegally by using tape recordings or photographs offends Articles 20(3) and 21 of the Constitution of India as acquiring the evidence by such

methods was not the procedure established by law.

23. In the case of R.M. Malkani (Supra.), the Hon'ble Supreme Court has held as under:-

24. It was said by counsel for the appellant that the tape recorded

conversation was obtained by illegal means. The illegality was said to be contravention of Section 25 of the Indian Telegraph Act. There is no violation of Section 25 of the Telegraph Act in the facts and circumstances of the present case. There is warrant for proposition that even if evidence is illegally obtained it is admissible. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See *Jones v. Owen*. The Judicial Committee in *Kuruma, Son of Kanju v. R.* dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches. The Judicial Committee held that the evidence was rightly admitted. The reason given was that if evidence was admissible it matters not how it was obtained. There is of course always a word of caution. It is that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence.â??

24. In the case of *Madhu v. State of Karnataka (Supra.)*, the Honâ??ble Supreme Court has held as under:-Â

â??23 It is a settled legal proposition that evidence collected even by improper or illegal means is admissible if it is relevant and its genuineness stands proved. However, the court may be cautious while scrutinising such evidence. In such a fact situation, it may be considered a case of procedural lapse on the part of the investigating officer and it should not be discarded unless the appellant satisfies the court that any prejudice has been caused to him.â??Â

25. In the aforesaid cases, the Honâ??ble Supreme Court has held that even if a document is procured by illegal means the same may be accepted in evidence if found relevant for adjudication of the issue and its genuineness is not doubted.

26. However, the respondent-CCL has challenged the admissibility of the said note sheet in the present case contending that it is an internal document

of the company which has been procured by the petitioner through illegal means. The contention of the learned senior counsel for the respondent-CCL

is that the note sheet which has been heavily relied upon by the petitioner is merely a noting in the departmental file prepared by a low ranking officer,

holding the post of Deputy Manager (M & S Operations) in pursuance of the representation of the petitioner seeking extension of time, which has no

legal significance, except being an opinion of the officer concerned. Moreover, Clause 16.9 of the Scheme clearly provides that any amendment or

modification in the terms and conditions in the Scheme shall be the discretion of the CIL/coal company. It is further contended that the Honâ??ble

Supreme Court in catena of decisions has held that the noting of an officer in a file is nothing more than an opinion of an officer for internal use and

unless final decision is taken, the same cannot be taken into cognizance in exercise of power of judicial review. In support of the said contention,

learned senior counsel for the respondent-CCL puts reliance on the following judgments rendered by the Honâ??ble Apex Court.Â Â Â

Â Â Â In the case of Ashok Kumar Aggarwal (Supra.) the Honâ??ble Supreme Court has held as under:

â??33. The instant case is required to be considered in light of the aforesaid settled legal propositions, statutory provisions, circulars, etc. The Tribunal

inter alia had placed reliance on notings of the file. The issue as to whether the notings on the file can be relied upon is no more res integra.

34. In Shanti Sports Club v. Union of India³⁰, this Court considered the provisions of Articles 77(2), 77(3) and 166(2) of the Constitution and held that:

(SCC p. 726, para 42)

â??42. â? unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the Rules, the

same cannot be treated as an order on behalf of the Government.â??

35. The Court further held: (Shanti Sports Club case³⁰, SCC pp. 726-27, para 43)

â??43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular

individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its

opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified

and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.â??

Â In the case of Sethi Auto Service Station (Supra.) the Honâ??ble Supreme Court has held as under:

â??12. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.â??

Â Â Â Â Â Further, in the case of Jasbir Singh Chhabra (Supra.), the Honâ??ble Supreme Court has held as under:-

â??35.----However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous considerations.Â

38. Thus, in view of the above, it is evident that the notings in the files could not be relied upon by the Tribunal and Court -----â??

27. In the present case, the petitioner has relied upon a note sheet in which Deputy Manager (M & S Operation) of CCL dealing with the application

of the petitioner for extension of time, who made some favourable comment. The said noting cannot be taken into consideration for issuance of writ of

mandamus in view of the fact that the same cannot be treated as a decision in

shape of an order of the competent authority of CCL. It may at most be treated a recommendation by a mid rank officer having no legal significance.Â

28. Learned senior counsel for the respondent-CCL has contended that there were sufficient quantity of coal at the stockyard of mines and had the petitioner deposited the full amount of the allotted rakes, the same would have been delivered to it. So far as the short delivery of coal against the paid amount of 125 rakes by the petitioner is concerned, it has been contended that once the rake is allotted, the delivery is made as per the prevalent

Railways rules and the allotment has non-lapsable character. Thus to proceed further, it would be appropriate to examine the relevant provisions of the

Scheme which reads as follows:-

11.2.3 The validity of a monthly programme for movement by rail for seeking allotment of rake shall be till day of the month concerned and

consent of the programme shall be issued by the concerned coal company accordingly. However for the first month after the commencement of the

auction, the validity period of the monthly programme for movement by rail for seeking allotment of rake shall be thirty days from the auction date.

Once the rake is allotted, it shall remain valid for supply of coal as per prevailing railways rules.Â

14. Forfeiture of EMD/BG/Security Deposit The EMD/Security Deposit submitted by the successful bidder shall be liable for forfeiture in the

following cases:-Â

14.1 If after completion of e-auction, a successful bidder fails to make payment for the monthly scheduled quantity of the coal value including all other

charges as applicable within the stipulated time, the proportionate EMD equivalent to the failed quantity shall be forfeited subject to the provisions of

this scheme and its terms and conditions.Â

14.2 If the successful bidder does not lift the booked quantity within the stipulated validity period, the proportionate security deposit (as converted from

the EMD amount) or the applicable BG amount for the un-lifted quantity would be forfeited.Â

In case of supplies of road, such forfeiture shall be made only if the balance uplifted quantity is equal or more than a truck load i.e 9 or 10 tonnes as

applicable.

14.3 Such forfeiture, however, shall not be applicable if the coal company has failed to offer full or part of the monthly scheduled quantity of the bidder

within the validity period. However, no forfeiture would take place if the balance quantity is less than a truck load or rake load.â??Â

29. Clause 14.1 of the Scheme explicitly provides that if the bidder fails to deposit the coal value within the stipulated time, the coal company is entitled

to forfeit the proportionate EMD equivalent to the failed quantity subject to the provisions of the scheme and its terms and conditions. However,

Clause 14.3 further provides that the forfeiture shall be not made if the coal company has failed to offer full or part of the monthly scheduled quantity

of the bidder within the validity period. Admittedly, after allotment of coal, the petitioner had initially provided the monthly scheduled quantity on

29.08.2016 whereby no rake was sought for two months i.e August and September, 2016. However in the month of October, 2016, the petitioner

revised the MSQ unilaterally vide letter dated 21.10.2016 and sought no rake till November, 2016 and again in the month of November, 2016, the

petitioner revised the MSQ vide letter dated 27.11.2016 and sought no rake till December, 2016 and further in the month January 2017 vide letter

dated 30.01.2017, the petitioner again revised the MSQ and sought no rake till February, 2017. Thus, for the first seven months, the petitioner itself

opted for â??nilâ?? supply and for the first time deposited the value of coal in February, 2017 and immediately thereafter the respondent CCL made

sanction of coal leading to allotment of rakes and, accordingly, supply of coal commenced in the month of March, 2017. It further transpires from the

record that subsequent to deposit of the coal value by the petitioner, the respondent-CCL sanctioned the coal within the validity period. Learned

counsel for the petitioner has given much stress on his argument that it has been supplied only 85 rakes against the deposit of coal value of 125 rakes

and thus the respondent-CCL has committed breach of contract. However, it is noticed that as per the stipulation made in Clause 11.2.3, once the

rake is allotted, it shall remain valid for supply of coal as per prevailing Railways rules. Thus, the argument of the learned counsel for the respondent-

CCL that the allotment of rakes has non lapsable character appears more convincing. Merely due to the reason that some rakes were still to be

supplied, does not entitle the petitioner to refuse to deposit the coal value within the stipulated time i.e by 31.07.2017. The condition for deposit of the

coal value, being mandatory in nature, was required to be followed by the petitioner.

30. Moreover, the petitioner did not deposit the coal value till January, 2017. However, the reason for not depositing the coal value till January, 2017

has been explained by the learned counsel for the petitioner by submitting that till that time the respondent-CCL was not in a position to supply the coal

and as such deposit of coal value would not have changed the situation. I do not find force in the said submission of the learned counsel for the

petitioner. The petitioner has failed to bring on record any letter issued by the officials of the respondent-CCL whereby they had ever requested the

petitioner for changing the monthly scheduled quantity due to non-availability of coal at the coal siding. It is the specific condition stipulated in the

Scheme that the supply would commence only on the payment of coal value in advance. No relief can be granted to the petitioner on the basis of this

assumption that the deposit of coal value would not have changed the situation as there was no coal available at the coal siding.Â Â

31. Moreover, Clause 14.1 of the Scheme explicitly provides that if the bidder fails to make payment of the coal value of monthly scheduled quantity

including all other charges as applicable within the stipulated time, the proportionate EMD equivalent to the failed quantity shall be forfeited. Thus, it

was obligatory on the part of the petitioner to deposit the coal value within the stipulated time which it failed to deposit, thus no relief can be granted to

the petitioner under extra ordinary writ jurisdiction as the petitioner itself was at fault due to which the supply could not commence in time.Â Â

32. The next limb of the argument of the learned counsel for the petitioner is that 10 daysâ?? notice as provided under clause 8.3 of the Scheme was

not given to it before taking steps for forfeiture. However, it appears from Clause 14.1 of the scheme (which deals with the forfeiture of EMD) that

the same does not provide for giving any notice before passing of the order of forfeiture. Moreover, admittedly a general notice dt. 17.07.2017 was

given to all the allottees to deposit the coal value till 31.07.2017 failing which it was mentioned inter alia that action would be taken in accordance with

law and the said notice was responded by the petitioner by submitting representations dated 19.07.2017 and 24.07.2017 requesting for extension of the

validity period for lifting of coal for e-auction phase-III. Thus, it cannot be said that the petitioner has been put to any prejudice by non-issuance of

show cause notice before passing the impugned order of forfeiture. So far the 10 days notice stipulated in clause 8.4 is concerned, the same is

required to be given in a case if the bidder makes default in lifting the coal so that it may be given an opportunity to pay the amount under encashment

by invocation of the bank guarantee.

33. The petitioner has claimed for extension of time for supply as well as payment of the coal value, however, it failed to show any such provision in

the Scheme which provides for extension of time for deposit of coal value. On the contrary, learned senior counsel for the respondent-CCL has

submitted that the terms and conditions of the scheme is to be uniformly applied to all the Bidder and if any relaxation is allowed in favour of the

petitioner, it would amount to bestowing unwarranted indulgence in favour of a single entity. The Hon'ble Supreme Court in the case of Rajasthan

State Industrial Development and Investment Corporation (Supra.) has also held that a party cannot claim anything beyond what is covered by the

contract as it enters into a contract with open eyes. I find no arbitrariness on the part of the respondent CCL in not extending time for deposit of coal

value more so in view of the fact that the petitioner itself was in default in not seeking supply for the first seven months and kept requesting for

extension of the time.

34. So far as the contention of the learned counsel for the petitioner that the respondent-CIL/CCL has earlier extended time for depositing coal value

in e-auction Phase-II scheme is concerned, the learned senior counsel for the respondent-CCL has submitted that during the relevant period, the

country was undergoing a phase of demonetization as per the policy of the Central Government and, therefore, the respondent-CIL took a policy

decision to extend time for depositing the coal value, which was made uniformly applicable to all the customers. I find substance in the said submission

of the learned senior counsel for the respondent-CCL. If any uniform policy decision is taken so as to give certain relaxations to all the customers

under extra ordinary circumstance, the said decision cannot be treated as a precedence to be applied in an ordinary/normal situation. Thus, the

instance cited by the petitioner regarding extension of time granted by the respondent-CIL during e-auction Phase-II scheme shall not be applicable in

the facts situation of the present case, which is entirely different from the

circumstances which prevailed during the demonetization phase.Â Â Â Â Â Â

35. Learned counsel for the petitioner has vociferously argued that once the rake is allotted, the respondent-CCL is bound to supply the allotted coal

within the stipulated validity period and if the CCL failed to supply the coal within such period, no forfeiture of EMD can be made. The said argument

of learned counsel for the petitioner is also misconceived. As per the Scheme, the contract appears to be in two parts. The first part deals with the

payment issue under which the bidder is required to pay the coal value within the stipulated time and if it fails to make the said payment, the CCL is

entitled to forfeit the EMD. However clause 14.3 saves the forfeiture in a condition if the CCL does not offer the MSQ within the validity period.

Learned counsel for the petitioner tried to convince this court that its case comes under clause 14.3 as no supply was made to it within the stipulated

time. In my considered view, the petitioner has misconstrued the provision of clause 14.3 which speaks of the 'offer' not the 'supply'.

The record reveals that as soon as the petitioner deposited the part coal value, the respondent-CCL consented for supply within the validity period and

only thereafter the rakes were allotted for supply of coal. The said fact has been admitted by the petitioner in the pleading. Moreover, the petitioner

opted for supply of coal through rail mode. Clause 11.2.3 of the scheme specifically provides that once the rake is allotted, the same shall be valid as

per Railways Rules. Thus, the stand of the respondent-CCL that as soon as the petitioner paid the coal value, the supply was made to it appears to be

of substance.

W.P.(C) No.4426 of 2017:

36. In the present case the Respondent-CCL, vide notice dated 17.02.2017, invited Special Forward e-auction for Power Producers 2016-17 (Phase-

VII) held on 27.02.2017. The petitioner participated in the auction and was allotted total quantity of 81 rakes of coal to be lifted through rail mode from

Piparwar Area of Bachra Siding and it gave a declaration regarding distribution/bifurcation of the quantity of coal in two months i.e March and April

2017 and accordingly specified that it intends to lift 40 rakes of coal in the month of March, 2017 and 41 rakes of coal in the month of April, 2017.

However the said schedule was modified and the petitioner declared that it would

lift 28 rakes of coal in the month of March, 2017 and remaining 53 rakes of coal in the month of April, 2017. The petitioner deposited the coal value with respect to 28 rakes of coal on 02.03.2017. Sanction was granted by the CCL for allotment of rakes to the Railways on 06.03.2017 and the allotment of rake was made by the respondent-Railways in the month of March, 2017 itself i.e. from 09.03.2017 to 18.03.2017, however, out of total scheduled quantity of 28 rakes, the petitioner was supplied 2 rakes of coal in the month of March, 2017. Further, in the month of April, 2017 till 21.04.2017, only 8 rakes of coal was supplied to the petitioner. The petitioner, vide letter dated 21.04.2017, requested the respondents-CIL and CCL for extension of the last date of deposit of coal value from 29.04.2017 to 30.06.2017. The petitioner made further payment of coal value of 17 rakes to the respondent-CCL on 29.4.2017 for an amount of Rs.16,78,24,000/-.

The sanction was granted by the respondent-CCL to the Railways for allotment of rakes on 12.05.2017 and thereafter allotment of 17 Railways rakes was made by the Railways from 19.05.2017 till 24.05.2017. The petitioner, however, submitted representation dated 08.05.2017 to the respondent-CCL requesting therein for extending the period of deposit of the coal value in respect of remaining 36 rakes of coal.Â Â

37. The thrust of the argument of the learned counsel for the petitioner is that inspite of the fact that 100% coal value of 46 rakes were paid to the respondent-CCL, only 8 rakes were supplied to it till 31.05.2017 i.e the last day validity period, thus the respondents have themselves violated the terms and conditions of the scheme and as such the forfeiture of security deposit by the CCL on the pretext that 100% coal value of total allotted quantity of 81 rakes has not been deposited by the petitioner is highly arbitrary. On the contrary, it is contended on behalf of the respondent-CCL that the petitioner was duty bound to pay the coal value of 53 rakes till 29.04.2017 failing which the consequence as per the scheme is the forfeiture of EMD. So far as the supply part is concerned, once the rake was allotted, the same remained valid till supply as per Railways rules. Since advance payment for balance 36 rakes along with the programme was not submitted by the bidder (the petitioner) as per notified schedule, hence the offer for loading of proportionate number of rakes by CCL could not be forwarded to the Railways for allotment of rakes for the month of April 2017. If the

petitioner had submitted the coal value along with the programme within the time schedule, all rakes would have been offered to railways for allotment and supply.

38. The fact of the present case is also identical to W.P.(C) No. 5329 of 2017 as in the present case also 100% coal value of the allotted rakes were

not paid by the petitioner till 29.04.2017 which was the last date of payment. As already observed hereinabove, there are two part of the contract i.e.

the supply part and the payment part. The petitioner was obligated to deposit 100% coal value irrespective of supply. The supply was

required to be made as per the Railways' rules since the petitioner had chosen the supply through the rail mode. It has been specifically mentioned

in the Scheme itself that once the allotment is made within the validity period, the same has non-lapsable character. It is evident from the record that

the petitioner had made the representations seeking extension of time to deposit the coal value which reflects that the petitioner was quite aware of

the fact that it is bound to pay the same within the validity period. So far the stand of non-extension of time is concerned, the respondent- CCL has

contended that the terms and conditions of the scheme has been laid down for every allottee and once the petitioner is given any relaxation, which

otherwise is not permissible, the whole purpose of the scheme would frustrate. In the present case also it is evident that after deposit of the coal value,

the respondent-CCL offered the MSQ within the validity period, thus, there appears no arbitrariness on the part of the respondent-CCL.

39. So far as issue regarding delay in supply of the allotted coal raised in both the writ petitions is concerned, the case of the petitioner is that the delay

has occasioned due to the fault of the respondent CCL as it did not have sufficient coal in the railways siding, whereas the case of the respondent-

CCL is that there was sufficient coal at the stockyard and since the rakes were not placed at the railways siding, the same was not supplied. The

respondent-railways has also supported the case of the petitioner that it was the responsibility of the CCL to supply the coal after the allotment of the

rakes. Thus, the petitioner, the respondent-Railways and the respondent-CCL have their own case to contend before this Court about the delay

occurred with respect to supply of coal for the allotted rakes. Since the main issue before this Court is as to whether the respondent-CCL is justified in

forfeiting EMD of the petitioner, this court is not inclined to enter into the disputed question of fact as to who was at fault in delayed supply of the allotted coal which requires laying of evidences and detailed factual adjudication. Accordingly, the parties are free to move before the appropriate forum for determination of the said issue.Â

40. In both the writ petitions, the petitioner has failed to deposit 100% value of the allotted coal. Learned counsel for the petitioner has tried to convince this court that the respondent-CCL has failed to supply the monthly quantity within time and as such the EMD could not be forfeited in view of Clause 14.3 of the Scheme. At the cost of repetition, it is reiterated that the petitioner has wrongly construed the provisions of the scheme. The scheme nowhere provides that the payment of coal value would be dependent upon the extent of supply. The only obligation on the part of the respondent-CCL was to offer the MSQ within the validity period. If on deposit of coal value, the offer is made by the respondent-CCL and the rake is allotted by the Railways, the supply is to be governed by the Railways rules.

41. Under the aforesaid facts and circumstances, both the writ petitions being devoid of merit are, accordingly, dismissed.

42. Consequently, I.A. Nos.7489, 7491 & 9236 of 2017 in W.P.(C) No.5329 of 2017 and I.A. No.6854 of 2017 in W.P.(C) No.4426 of 2017 also stand dismissed.Â Â