

(2013) 01 AP CK 0024
In the Andhra Pradesh High Court
Case No : Writ Petition No. 375 of 2012

M/s. IBC Ltd.

APPELLANT

Vs

The A.P. Mineral Development Corporation Ltd.

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2013) 3 ALD 740 : (2013) 3 ALT 572

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : V. Ravinder Rao, for the Appellant;

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—Proceedings vide letter No. M&S/BAR-BENF/IBC/11, dated 9-11-2011 of the respondent, whereby it has rejected the request of the petitioner for supply of low grade (C+D+Waste) varieties of Barytes as per the rates fixed under agreement dated 18-6-2008, is assailed in this Writ Petition. The facts leading to the filing of the Writ Petition are as follows:

2. By G.O.Ms. No. 27, Industries & Commerce (M-III) Department, dated 7-1-1974, the Government of Andhra Pradesh has reserved exploitation of Barytes mineral exclusively for the public sector. Such exploitation by the respondent and other companies permitted by it has left huge quantity of dumps containing low grade mineral deposited in the area around Mangampet, in which the mining area is located. As the accumulated low grade mineral has posed serious ecological and environmental problems, proposal for setting up beneficiation plants was mooted. Accordingly, the respondent has issued notification dated 28-7-2006 inviting Expression of Interest (EOI) for establishment of the plants under joint venture to beneficiate the low grade Barytes. Four companies, including the petitioner, have responded to the said notification. Three out of the four companies, including the petitioner, were qualified for establishment of the beneficiation plants at Management.

3. The State Government has issued G.O.Ms. No. 38, Industries and Commerce (M.III) Department, dated 7-3-2007, according permission for setting up of the beneficiation plants to the three qualified companies, including the petitioner, with capacity not exceeding 2 lakh Metric Tons (M.T.) each per annum, under joint venture with the respondent-Corporation. Accordingly, on 18-6-2008, the respondent entered into agreement with the petitioner. The relevant terms and conditions of the agreement will be adverted to at a later stage. However, for the present, it will suffice to note that under Clause 2(i) of the agreement, the Investor/JVC shall complete the establishment of the beneficiation plant within two years from the date of the agreement. It was agreed that the respondent-Corporation, being a partner in the JVC, shall extend co-operation and assistance wherever possible in obtaining clearances and infrastructure amenities. Under Clause 2(ii), the Corporation shall consider extension of the time frame only on valid grounds to its satisfaction. Under Clause 9(i), the Corporation undertook to supply a quantity not exceeding 2 lakh M.Ts. of low grade Barytes (C+D+Waste grade) to the JVC on Ex-Mangampet Barytes mine, on as is where is basis as per the usual sales and terms and conditions of the Corporation. Under sub-clause (ii) thereof, the sale price is Rs. 221/- per M.T. (loose) on Ex-Mangampet mine, exclusive of the statutory levies etc. The said Clause envisaged increase in the sale price every year by 4% over the price of the previous year. As per the agreement, the plant must commence its operations from June 2010.

4. As the petitioner could not complete the establishment of the plant within the prescribed time, it has approached the respondent for extension of time. A meeting was held between the parties on 25-3-2010 wherein the petitioner has informed the respondent that it will be commencing civil works from 1-4-2010 and that it requires 1? years" time to complete the work in all respects. Accordingly, the petitioner requested for extension of time till April 2011. The respondent has accepted the petitioner's request for extension, subject to the latter continuing to purchase 2 lakh M.Ts. of Barytes of C+D+Waste grades with effect from 1-7-2010 in monthly lots of 16,667 M.Ts. and quarterly lots of 50,000 M.Ts. at the sale price of Rs. 394/- per M.T. (loose), Ex-Mangampet mine/stock yard basis, exclusive of the statutory levies like royalty, sales tax etc. The respondent also stipulated a condition that the petitioner shall pay Rs. 10/- per M.T. towards development of infrastructure in the local areas.

5. The petitioner pleaded that even though the conditions imposed by the respondent for extension of time are contrary to Clause 2(ii) of the agreement, besides being onerous, arbitrary and unreasonable, as it has already spent substantial money by that time towards establishment of the Plant, it had no option except to agree for the said conditions. However, as the petitioner could not complete the establishment of the plant within the extended time, it has again approached the respondent with a request for further extension. Considering the said request, the respondent, in its 356th Meeting held on 19-7-2011, approved for further extension of time upto 31-10-2011, subject to the conditions that the petitioner shall lift the quantity pertaining to the period

from 1-10-2010 to 30-6-2011 @ Rs. 394/- per M.T. within a period of six months at 25,553 M.T. per month by paying the cost of material during the first week of every month; that the petitioner must also lift the second year quantity for the period from 1-7-2011 till commissioning of the plant @ Rs. 414/- per M.T. and that this arrangement will be valid till 31-10-2011, or upto the date of commissioning of the beneficiation plant, whichever is earlier. The Corporation has also decided to renegotiate the sale price after commissioning of the plant by the petitioner.

6. The petitioner addressed letter dated 20-9-2011 wherein it has inter alia stated that while it was fully committed to and involved in the process of establishment of the beneficiation plant, the respondent has proposed to invoke the petitioner's performance guarantee of Rs. 50 lakhs vide its letter dated 28-7-2010; that under the said circumstances, the petitioner had no choice other than commencing taking delivery of C+D material at the price decided by the Corporation even though the same is contrary to the terms and conditions of the agreement dated 18-6-2008, while the other two companies have approached the Court, and that without prejudice to the petitioner's rights under the agreement, it may consider payment of maximum revised price of Rs. 325/- per M.T. with an annual increase of 4% as long as its unit is in operation. The petitioner also desired that this price shall be applicable for all the backlog quantities which it is liable to lift under the agreement.

7. Through its letter dated 15-10-2010, the petitioner informed the Managing Director of the respondent-Corporation that it has stabilized the crushing and jigging units which are part of the operations relating to the Barytes beneficiation and that the trial run of the plant was also made during the latter's visit of the plant on 28-8-2011. The petitioner therefore informed that it shall start procuring the C+D+Waste material at 16,666 M.Ts. per month as per the terms of the agreement and accordingly requested to issue D.Os. in the name of M/s. Andhra Baryte Corporation Pvt. Ltd., to enable the petitioner to commence the beneficiation plant. The petitioner has also enclosed cheque dated 15-10-2011 for Rs. 43,87,531/- towards the value of 16,666 M.Ts. of C+D+Waste varieties of Barytes. In response to letters dated 20-9-2011 and 15-10-2011 of the petitioner, the respondent has addressed letter dated 9-11-2011, wherein it has expressed its disinclination to supply the material at the agreement rate until fixation of price after re-negotiation as directed by the latter's Board of Directors. It is also stated in the said letter that there has been a sharp increase in the price of A and B Grade (89%) Barytes and proportionately the price of C+D+Waste grades of the mineral has also increased to Rs. 800/- per M.T. from 8-8-2011 and that the supply of the said grade material at a lesser price will cause loss to the Corporation. While expressing that negotiation needs to be done for increasing the value of the C+D+Waste grades, it was suggested that if the petitioner desires, it can lift the mineral at the present market rate. In response to the said letter, the petitioner addressed letter dated 16-11-2011 to the respondent wherein while informing that while they are prepared to come for

negotiations without prejudice to their right under the agreement dated 18-6-2008, the former has requested the latter to supply the material as per the agreement pending finalization of the negotiated rate as the beneficiation plant is ready for commissioning and operations. As the respondent has not accepted this proposal, the petitioner filed this Writ Petition.

8. The sheet-anchor of the petitioner's case, as reflected in its pleadings, is that on the promise made by the respondent to supply 2 lakh M.Ts. of low grade Barytes mineral per annum, at an agreed price and made it to alter its position, the respondent is estopped from resiling from its promise. The petitioner has also pleaded that in the face of the binding agreement between the parties, the respondent is not entitled to demand enhanced price.

9. A counter-affidavit has been filed by the Vice-Chairman and Managing Director of the respondent-Corporation wherein objection to the maintainability of the Writ Petition is taken on the ground that the dispute arises under a non-statutory commercial contract and that therefore the petitioner is entitled to invoke the common law remedies only. The respondent sought to justify the demand of the increased price on the plea that as per Clause 2(i) of the agreement, the petitioner has to complete the establishment of the beneficiation plant within a period of two years from the date of the agreement; that even though the petitioner failed to establish the plant within the said stipulated time, the respondent, instead of terminating the agreement, extended the period twice upto 30-10-2011, subject to the former lifting the agreed quantities at the enhanced price of Rs. 394/- per M.T. upto 30-6-2010 and @ Rs. 414/- per M.T. from 1-7-2011 upto 31-10-2011; and that the petitioner, having agreed to purchase the quantities at the said prices vide their letter dated 14-9-2011, is estopped from pleading that the respondent is under an obligation to supply the material @ Rs. 221/- per M.T. as per the agreement.

10. Sri. V. Ravinder Rao, learned counsel for the petitioner, advanced the following submissions:

(i) That the respondent, having entered into a bilateral agreement with the petitioner and agreed to supply the Barytes mineral of a particular quantity at a particular price, cannot act in violation of the specific terms of the agreement and that its action in demanding the higher price contrary to the terms of the contract constitutes patent arbitrariness;

(ii) that having made a promise to supply the Barytes at a particular price and made the petitioner to act on such promise and alter its position, the respondent is estopped from acting contrary to the promise by application of the doctrine of promissory estoppel; and

(iii) that as the respondent, which is a State owned Corporation, is amenable to public law remedy under Article 226 of the Constitution of India, even though it is acting under a non-commercial contract, its actions are liable for judicial scrutiny on the touchstone of Article 14 of the Constitution of India.

11. In support of his submissions, the learned counsel relied upon the following Judgments:

The Union of India Vs. Kishorilal Gupta and Bros., The Central Bank of India Ltd. Vs. Hartford Fire Insurance Co. Ltd., Hind Construction Contractors by its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by Lrs Vs. State of Maharashtra, Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., Common Cause, A Registered Society Vs. Union of India and Others, ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, M.D., H.S.I.D.C. and Others Vs. Hari Om Enterprises and Another, Karnataka State Forest Industries Corporation Vs. Indian Rocks, Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. and Others, , U.P. State Electricity Board, Lucknow Vs. Ram Barai Prasad and Another, and Vijay Minerals Pvt. Ltd. Vs. Bikash Chandra Deb,

12. The learned Advocate-General appearing for the respondent-Corporation, advanced the following submissions:

(i) That the Writ Petition is not maintainable as the dispute arises under a non-statutory commercial contract and therefore the petitioner is entitled to invoke the common law remedies; and

(ii) that even if the action of the respondent is amenable to judicial scrutiny, it has acted in consonance with the terms of the agreement and that the petitioner failed to lay proper foundation for pressing into service the doctrine of promissory estoppel to contend that the respondent cannot increase the sale price of the mineral agreed to be supplied to the petitioner under the agreement in question.

13. In support of his submissions, the learned Advocate-General has relied upon the Judgment of the Supreme Court in Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, and the Judgment of this Court in Kona Raghupathi Vs. The Andhra Pradesh State Road Transport Corporation and others

14. Having regard to the aforementioned pleadings of the parties and the contentions advanced by their respective Counsel, the following Points emerge for consideration:

1. Whether, on the facts and circumstances of this case, the Writ Petition is an appropriate remedy ?

2. Whether the action of the respondent in demanding higher price for the supply of Barytes mineral to the petitioner is in violation of the terms of the agreement between the parties, and, if so, the same is arbitrary ?; and

3. Whether the doctrine of promissory estoppel applies on the facts of this case ?

15. Re Point No. 1: The issue relating to the maintainability of the Writ Petition under Article 226 of the Constitution of India is the subject matter of a long debate by the Constitutional Courts. The judicial authorities for and against interference in cases where the State or its instrumentalities enter into contracts with private individuals, and act arbitrarily, are not wanting. There is a seeming dichotomy in the views of the Apex Court on this aspect. Having noticed the same, a Division Bench of this Court in *Superintending Engineer, The Superintending Engineer and Another Vs. Pioneer Builders* speaking through me, at para-9, made the following observations:

As regards the maintainability of a Writ Petition under Article 226 of the Constitution of India for adjudication of disputes arising under a concluded non-statutory contract between a private party and the State or its instrumentalities, there is virtual dichotomy in the views expressed by the Supreme Court. While the view expressed in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, followed by the judgments in *State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.*, *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, *State of Jammu and Kashmir Vs. Ghulam Mohd. Dar and Another*, *Binny Ltd. and Another Vs. V. Sadasivan and Others*, disfavoured entertainment and adjudication of such disputes by the High Courts exercising power under Article 226 of the Constitution of India, the Apex Court has taken a more liberal view in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others* and *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, and interfered with the decisions taken under concluded contracts on the touchstone of Article 14 of the Constitution of India.

16. After referring to the development of law in the subsequent Judgments such as *ABL International Ltd. (6-supra)* and *United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others*, this Court summarized the legal position, at paras 12 to 14, as under:

A careful analysis of the judgments of the Supreme Court referred to above reveals that the earlier conservative view of non-interference in cases arising under non-statutory contracts has given way to a some what liberal approach of limited interference. In effect, the Constitutional law limitations on the State actions while acting in administrative sphere are also applied even to contractual sphere.

Though ordinarily the superior Courts relegate the parties to the common law remedies such as arbitration (wherever such a provision in the concluded contracts is made) or a civil suit, in specific situations such as term of contract being against the public policy or while enforcing a term of contract the State acts arbitrarily, unfairly or unreasonably or makes discrimination amongst the persons similarly situated, they exercise extraordinary jurisdiction under Article 226 of the Constitution in such particular situations.

On the analysis as above, we cannot accept the contention of the learned Government Pleader that the learned Single Judge ought not to have entertained the Writ Petition as it raised a dispute arising under a concluded contract. If it is eventually found that the appellants acted arbitrarily in seeking to deduct from the bills under the later contract, the alleged liability of the respondent arising under the earlier contract, we are of the view that the Writ Petition is certainly maintainable.

(Emphasis added)

17. Contemporaneous to the Judgment in Superintending Engineer (16-supra), the Apex Court rendered Judgment in M.D., H.S.I.D.C. (9-supra) wherein while reiterating its earlier views in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, and ABL International Ltd. (6-supra), it has succinctly summed up the legal position, at para-41, as under:

It may be true that ordinarily in a matter of enforcement of a contract qua contract, a writ court shall not exercise its jurisdiction under Article 226 of the Constitution of India. But, it is also trite that where the action of a State is violative of Article 14 of the Constitution of India as being wholly unfair and unreasonable, the writ court would not hesitate to grant relief in favour of a person, where both law and equity demands that such relief should be granted.

18. While repelling in unequivocal terms that the Writ Petition against a Government undertaking for specific performance of contract is not maintainable, the Supreme Court in Gujarat State Financial Corporation (4-supra), held, at para-9 as under:

... It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution of India can commit breach of a solemn undertaking on which the 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....

19. In that case, the Gujarat State Financial Corporation (for short "the Corporation") sanctioned a loan of Rs. 29.93 lakhs on certain terms and conditions for establishment of a four-star hotel by the Lotus Hotels Pvt. Ltd. (for short "the Company"). In pursuance of the agreement between the Corporation and the Company, an equitable mortgage was created by the latter. When the Corporation approached the IDBI for refinancing the loan, on the basis of certain pseudonymous letters received by it on the creditworthiness of the Company, it has declined refinance leaving an option to the Corporation to resubmit the application on receipt of satisfactory report from the concerned authorities. As the Corporation did not disburse the loan in terms of the agreement, the Company has filed a Writ Petition under Article 226 of the Constitution of India. A learned single Judge of the Gujarat High Court allowed the Writ Petition by issuing a mandamus directing the Corporation to disburse the promised loan to

the Company in accordance with letter dated 24-7-1978 and agreement dated 1-2-1979. The Letters Patent Appeal filed against the said Judgment was dismissed by a Division Bench. Feeling aggrieved by both these Judgments, the Corporation has filed a SLP wherein leave was granted. The Supreme Court has dismissed the Civil Appeal by confirming the Judgments of the Gujarat High Court. The Apex Court, while so doing, held that having promised the Company to advance loan for establishment of a hotel and made the latter to alter its position, the Corporation was estopped from going back on its promise by the principle of promissory estoppel. The Supreme Court also followed the principle laid down in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , and held that having entered into a solemn contract in discharge and performance of its statutory duty and made the Company act upon it, the statutory Corporation cannot be allowed to act arbitrarily so as to cause harm and injury flowing from its unreasonable conduct to the Company; that in such a situation the Court is not powerless from holding the Corporation to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty, and that a petition under Article 226 of the Constitution would certainly lie to direct performance of the statutory duty by "other authority" as envisaged by Article 12.

20. In the case on hand, it is not disputed that the respondent is a State owned Corporation. Therefore, it squarely falls within the phrase "other authorities" and consequently within the definition of "the State" under Article 12 of the Constitution of India. As per the settled legal position discussed above, the State or its instrumentalities cannot act arbitrarily even while acting under a non-statutory contract while performing statutory functions. On the strength of the ratio laid down in the above discussed Judgments, if this Court, on examination of the terms of the contract in question, opines that the respondent has acted in breach thereof, the petitioner would be certainly entitled to issuance of a mandamus to the respondent to adhere to the terms of the contract.

21. The Judgment in *Kona Raghupathi* (15-supra), on which reliance is placed by the learned Advocate-General, does not help the cause of the respondent, for, in that case, on a consideration of the agreement between the petitioner therein and the A.P. State Road Transport Corporation, I found that the clauses, on the basis of which the petitioner therein had claimed the right to use the approach road, were not unequivocal or unambiguous, and that the petitioner's right to claim under the agreement needs to be decided with the aid of evidence that may be adduced by both the parties as to their intention and understanding qua the right of the petitioner to use the approach road. Far from holding that the remedy of a Writ Petition under Article 226 of the Constitution cannot be invoked in all cases of enforcement of a non-statutory contract, this Court has held, at para-5, as under:

...Unless it is demonstrated that the action of the State or its instrumentalities, who are parties to a non-statutory contract, is so patently arbitrary or the same

is in blatant violation of the clauses of the agreement, this Court seldom interferes with the disputes arising under such contracts.

22. Thus, the opinion rendered by me in the said case was based on the facts of that case and therefore the same cannot be treated as having laid down the ratio to the effect that in all cases of non-statutory contracts, Writ Petitions cannot be maintained. Hence, this Point is answered in the affirmative.

23. Re Point No. 2: For deciding this Point, it is necessary to refer to the relevant terms and conditions for submission of the EOI and that of the agreement. Under Clause 1(iv) of the EOI, the investor selected by the respondent shall establish the beneficiation plant for low grade Barytes in and around Mangampet and the respondent shall supply the low grade Barytes (C+D+Waste Grade) required for the plant on priority basis. Under Clause 5, the respondent and the selected investor shall form a JVC and the investor shall sign a detailed agreement with the respondent within 15 days from the date of receipt of the LOI. Clause 6 envisages that 11% free-equity shall be allowed by the investor to the respondent in the JVC in consideration of supply of the low grade Barytes on priority basis on payment of sale price as mentioned in Clause 9 as long as the JVC exists and the free equity of 11% shall be maintained at all times. Clause 8 prescribed two years period for establishment of the Barytes beneficiation plant from the date of agreement. Under this Clause, the respondent shall consider extension of the period only on valid grounds to its satisfaction.

Clause 9 of the EOI, which is pivotal for this case, reads as under:

Supply of low grade Barytes:

(i) APMDC shall supply required quantity of low grade Barytes (C+D+Waste grade) to the JVC ON Ex-Mangampeta Barytes mine and on as is where is basis as per the usual sale terms and conditions of APMDC. APMDC shall not give any guarantee with regard to the quality. The supplies are subject to availability of production.

(ii) The sale price is Rs. 210 per MT loose on ex-Mangampet mine basis exclusive of statutory levies etc. There shall be increase in the sale price every year by 4% over the price of the previous year.

(iii) All the statutory levies like Royalty, Cess and Sales Tax etc., shall be extra at actuals. In the event of imposition of fresh levies, duties, taxes, cesses etc., by the State Government/Central Government the same shall be borne by the JVC.

24. Clause 11 of the EOI deals with Performance Security Deposit (PSD) under which the successful participant/investor shall pay Rs. 50 lakhs towards the PSD at the time of signing of the agreement and the E.M.D. of Rs. 10 lakhs will be adjusted against the PSD. Sub-clause (iii) of Clause 11, which is also very relevant for the case, is as follows:

APMDC reserves the right to forfeit the PSD including invocation of PBG in case

investor/JFC fails to implement the project of establishment of Barytes beneficiation plant within the time.

25. Under Clause 1(iii) of the agreement dated 18-6-2008, the capital required for establishment of the beneficiation plant and the funds required for working capital shall be arranged by the investor/JVC only and the respondent shall not provide any funds or stand as a guarantor for raising the funds. Clause 2(i) thereof prescribed two years from the date of agreement for completion of establishment of the beneficiation plant. Under sub-clause (ii) thereof, the respondent shall consider extension of the time frame only on valid grounds to its satisfaction. Under Clause 7(vi), the respondent reserved the right to forfeit the PSD by invoking Bank Guarantee if the investor/JVC fails to implement the project of establishment of the plant within the stipulated time or in any extension thereof. Clause 9 of the agreement is reproduced hereunder:

Supply of low grade Barytes by the Corporation

(i) The Corporation shall supply a quantity not exceeding 2,00,000 MTs (Two lakh tones per annum) of low grade Barytes (C+D+Waste grade) to the JVC on Ex-Mangampeta Barytes mine and on as is where is basis as per the usual sale terms and conditions of the Corporation. The Corporation shall not give any guarantee with regard to the quality. The supplies are subject to production and availability of stocks.

(ii) The sale price is Rs. 221 per MT loose on ex-Mangampet mine basis, exclusive of statutory levies etc. There shall be increase in the sale price every year by 4% over the price of the previous year.

(iii) All the statutory levies like Royalty, Cess and Sales Tax etc., shall be extra at actuals. In the event of imposition of fresh levies, duties, taxes, cesses etc., by the State Government/Central Government, the same shall be borne by the JVC.

(iv) The JVC shall pay to the Corporation in advance the sale value of the material including statutory levies and taxes etc.

(v) The Corporation shall not supply low grade Barytes Ore (C+D+W) except to Barytes Beneficiation Plants.

26. Clause 11 of the agreement provides for termination of the contract. While the Investor is vested with the right to terminate the contract in the event the Corporation is unable to supply the low grade Barytes as agreed under Clause 9 due to unforeseen circumstances, the latter is entitled to terminate the contract in the following three situations:

(a) In the event JVC does not allot 11% of free-equity shares to the Corporation.

(b) In the event investor/JVC does not establish Barytes Beneficiation Plant within a period of two years or extension thereof agreed to by the Corporation.

(c) In the event of breach of any terms of the agreement.

27. The learned Advocate-General submitted that sub-clause (ii) of Clause 9 of the EOI, on which the petitioner has placed strong reliance cannot be read in isolation and that the same shall be read along with sub-clause (i) thereof. If so read, contends the learned Advocate-General, it would be evident that the respondent agreed to supply 2 lakh M.Ts. of low grade Barytes per annum on as is where is basis as per the usual sale terms and conditions of the Corporation. He submitted that sub-clause (ii) of Clause 9, which stipulated Rs. 221/- per M.T. with 4% increase every year, shall be subject to the right of the respondent to supply the mineral as per its own terms and conditions of sale.

28. I do not find any merit in this submission. Under sub-clause (i) of Clause 9 of the agreement, the respondent committed itself to supply a quantity not exceeding 2 lakh M.Ts. of low grade Barytes per annum. The expression "on as is where is basis as per the usual sale terms and conditions of the Corporation" in the said clause is generic in nature. Had the agreement or the EOI not incorporated sub-clause (ii) to Clause 9, the respondent would have been well within its right to increase the sale price prevalent at the time of supply of the mineral. But the said sub-clause incorporated a specific term relating to the price. It has stipulated the price @ Rs. 221/- per M.T. loose on Ex-Mangampet mine basis, exclusive of the statutory levies etc. (As against Rs. 210/- per M.T. prescribed in the EOI). The said clause has also taken into consideration the future increase and stipulated the percentage of such increase over the price of the previous year. In the face of this specific clause dealing with the price, the phraseology in sub-clause (i) of Clause 9 of the agreement, cannot have overriding effect qua the price. The width and ambit of the phrase "usual sale terms and conditions of the Corporation" in sub-clause (i) of Clause 9 of the agreement, stand restricted to any other terms and conditions which are not prescribed in the agreement between the parties. Any other interpretation of sub-clause (i) of Clause 9 of the agreement would render sub-clause (ii) thereof, completely meaningless. Had it been the intention of the parties that the petitioner is liable to pay the sale price as fixed by the respondent from time to time, sub-clause (ii) of Clause 9, would not have been incorporated in the agreement at all. That the parties have agreed for a specific sale price in consideration of the fact that the petitioner agreed to allot fully paid-up equity shares equivalent to 11% of the share capital to the respondent, is evident from sub-clause (ii) of Clause 4 of the agreement. The said Clause reads as under:

The respondent shall be allotted fully paid up equity shares for consideration other than cash equal to 11% of the share capital in the JVC in consideration of supply of the low grade Barytes on priority basis at the sale price, terms and conditions as mentioned in Clause 9 herein as long as JVC exists and also being a facilitator in materializing this project.

29. The words "in consideration of supply of the low grade Barytes on priority basis at the sale price, terms and conditions as mentioned in Clause 9 herein as long as JVC exists" in the above reproduced sub-clause, undoubtedly prove that

fixation of the sale price in sub-clause (ii) of Clause 9(ii) of the agreement is in consideration of allotment of 11% of the share capital to the respondent. Therefore, the plea of the respondent that it has not agreed a for specific sale price and that it is entitled to increase the price as per the market conditions, flies in the face of the specific terms of the agreement. Having taken the benefit of allotment of 11% of the share capital without investing money as a quid pro quo to supply the mineral @ Rs. 221/- per M.T., subject to increase by 4% on the existing sale price every year, it lies ill in the mouth of the respondent to go back on its commitment and twist the facts to suit its convenience.

30. From the correspondence noted above, it is quite evident that the petitioner, having invested huge money, had no option other than taking the supplies at the increased price, albeit under protest, and without prejudice to its right under the agreement in the face of the threat of the respondent that the PSD will be forfeited and encashed for non-completion of the plant within the prescribed time. Letter dated 15-4-2010 and the subsequent letters of the respondent would show that it has fixed higher price than what is agreed under the agreement in lieu of termination of the agreement and forfeiture of the PSD. The respondent, being an instrumentality of the State, is not expected to take undue advantage of the situation in which the petitioner was placed by agreeing for extension of the period of completion of establishment of the beneficiation plant by the latter on condition of payment of the increased price for the mineral. The agreement dated 18-6-2008 between the parties does not empower the respondent to fix higher price for the mineral in lieu of termination of the agreement as a condition for extension of the period of completion of the project. Being a State owned Corporation, the respondent is under obligation to act fairly and strictly in accordance with the terms of the agreement. Even though Clause 2(i) of the agreement prescribed two years as the period of completion, sub-clause (ii) thereof, nevertheless, provides for extension of the time frame on valid grounds to the satisfaction of the respondent. From the fact that the respondent has extended the period twice, it is reasonable to presume that it was satisfied on the existence of valid grounds for extension of the period stipulated for completion of establishment of the plant by the petitioner. That being so, this Court does not find any justification whatsoever on the part of the respondent to stipulate an onerous condition pertaining to the sale price on the petitioner contrary to the specific terms of the agreement. If the respondent was not satisfied with the reasons given by the petitioner for seeking the extension of the completion period, it would have been open to the former to terminate the agreement and forfeit the PSD. But, the respondent has no right to increase the sale price in lieu of termination of the contract as if it is conferring a favour on the petitioner by not terminating the agreement. Such an action on the part of the respondent is not only arbitrary and unreasonable but also unconscionable. In *Ramana Dayaram Shetty (20-supra)*, the Supreme Court, while emphasizing on the need for the State and its instrumentalities to adhere to the tender conditions, held as under:

... It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Seton* 359 U.S. 535: 3 L.Ed. 1012 where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

31. The Supreme Court further held that the rule inhibiting arbitrary action by the Government would equally apply to a Corporation dealing with public, whether by way of giving jobs or entering into contracts, or otherwise, and it cannot act arbitrarily and that its actions must be in conformity with some principle which meets the test of reason and relevance.

32. On a holistic consideration of the terms of the agreement and the facts of the case, the conclusion is irresistible, namely, that the respondent has acted in a most arbitrary and whimsical manner by ignoring the specific terms of the contract and attempted to overcome the same by giving distorted interpretation of its terms. Such an action on the part of the respondent is abhorrent and despicable. This Point is accordingly held in favour of the petitioner and against the respondent.

33. Re Point No. 3: The principle of promissory estoppel which is also called "requisite estoppel", "quasi estoppel" and "new estoppel" has been evolved by the Courts of equity to avoid injustice and it is neither in the realm of contract nor in the realm of estoppel. Rowlatt, J., was the earliest Judge who has propounded the doctrine of promissory estoppel in *Rederiaktiebolaget Amphitrite Vs. The King* 1921 (3) KB 500. This was followed by the Australian jurist Dixon, J in *Grundt Vs. Great Boulder Pty. Gold Mines Ltd.* 1938 (59) CLR 641 (Aus.), who has described the principle as under:

It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it.

34. This principle was followed by Lord Denning in more than one case (*Central*

London Property Trust Ltd. Vs. High Trees House Ltd. 1947 KB 130 : (1956) 1 All. E.R. 256, Robertson Vs. Minister of Pensions (1949) 1 KB 227 : (1948) 2 All. E.R. 767, Central Newbury Car Auctions Ltd. Vs. Unity Finance Ltd. (1956) 3 All. E.R. 905 (CA)). The observations of Denning, J in Robertson (24-supra) are worth noticing:

The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in 1921-3 KB 500 but it was unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of AIR 1934 60 (Privy Council)

35. Shah., J, in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , speaking for a three-Judge Bench, held:

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen....

36. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , P.N. Bhagwati., J (as his Lordship then was), in his opinion rendered after considering the principles laid down by the English, American, Australian and other jurisdictions, luminously explained the principle as under:

The true principle of promissory estoppel 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 effect a legal relationship to arise in the future, knowingly or knowing 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. The doctrine of principle of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not

necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promise should alter his position in reliance on the promise....

37. The Judgments in Gujarat State Financial Corporation (4-supra), Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, have reiterated this doctrine. Various subsequent Judgments were also rendered by the Apex Court on this doctrine. I am not proposing to burden this Judgment by multiplying the authorities as it is unnecessary in the context of the present case.

38. The doctrine of promissory estoppel is not an absolute doctrine as it contains certain exceptions, such as, the promise being prohibited by law, or the promise being made by a person without authority or power. The doctrine being based on equitable principle, it must yield to equity if larger public interest so requires (See: Vasantkumar Radhakisan Vora (30-supra), Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, and Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another,

39. It is not the pleaded case of the respondent that enforcement of the doctrine of promissory estoppel in the instant case will be inequitable or against public interest. The learned Advocate-General has advanced two contentions on this aspect, namely, that the petitioner did not lay the foundation for claiming the relief on the basis of the doctrine of promissory estoppel, and that since the market rate of the agreed variety of Barytes is very high, the respondent cannot be forced to supply the same at a very low price. As regards the first submission, it is no doubt that in order to invoke the doctrine of promissory estoppel, the proponent thereof must lay a strong foundation by coming out with specific pleadings. Let me now examine whether the petitioner succeeded in doing so.

40. In para-11 of the affidavit, the petitioner pleaded as under:

I submit that the decision of the respondent not to supply the material at the agreed price till the same is renegotiated is illegal, unjust and arbitrary. Under the agreement the petitioner was made to invest substantial amount, establish the beneficiation plant, form a joint venture company, allot 11% of free ride paid-up shares to the respondent, provide necessary performance security deposit and raise and avail financial assistance from the bank which is being serviced by the petitioner by paying the EMI regularly. On complying with the above said obligations under the agreement the respondent promised to supply the low grade mineral in a volume of 2 lakh M.Ts per annum at the price agreed upon. Having made the petitioner alter its position to its detriment, the respondent by taking advantage of its dominant position is insisting on enhancing the price of the low grade barites which it is under an obligation to supply at the price agreed

upon in the agreement dated 18-6-2008. The binding agreement between the parties does not provide for any revision or enhancement of price. In the absence of such a clause providing for revision of the price, the respondent is barred from imposing its alleged imaginary price. Having promised to supply the material on petitioner complying with the obligation in the agreement, the respondent is barred from unilaterally altering the terms and conditions more particularly the price of the material to be supplied. By acting in terms of the agreement, i.e., by investing substantial amount and establishing the beneficiation plant the petitioner has altered its position to its detriment. In such a situation the respondent is estopped from insisting on alteration of terms and conditions. The respondent cannot insist on the negotiation of the price and deny supply of the material at the agreed price. Under the binding agreement, the respondent is bound to supply the low grade barites (C+D+Waste) at the agreed price.

41. In my opinion, the above noted pleadings are enough for the petitioner to invoke the doctrine of promissory estoppel. The facts pleaded by the petitioner, namely, the unequivocal promise made by the respondent to supply the low grade Barytes of a particular quantity at the agreed price and the petitioner acting on such promise by establishing the plant by investing huge money and altering its position, satisfy the requirements of the doctrine of promissory estoppel, as enunciated by the Apex Court in *M.P. Sugar Mills* (27-supra) and other Judgments referred to above. The respondent, therefore, cannot wriggle out of the promise it has made to the petitioner, on a jejune ground that the current market price of the Barytes mineral agreed to be supplied to the petitioner under the agreement, is high. At the cost of repetition, it may be observed that the petitioner cannot be equated with any other potential buyer in the market, for the reason that the respondent has entered into an agreement with the former whereunder the latter has derived the benefit of 11% free ride paid-up shares. It must therefore be held that as a quid pro quo, the respondent has agreed for supply of the low grade Barytes at Rs. 221/- per M.T., subject to increase in price @ 4% over the price of the previous year. I have therefore no hesitation to hold that the petitioner is entitled to invoke the doctrine of promissory estoppel and the respondent is estopped from going back on its promise of supply of the mineral at the price as agreed under Clause 9(ii) of the agreement as well as in the EOI.

42. For the above mentioned reasons, the Writ Petition is allowed with costs of Rs. 25,000/- and a mandamus shall issue as prayed for. As a sequel, WPMP No. 481/2012 is disposed of as infructuous.