(2009) 08 PAT CK 0044

In the Patna High Court

Case No : CWJC Nos. 16359, 16378, 16551, 19081 of 2008, 593 and 4432 of 2009

Shanti Steels and Others APPELLANT

Vs

The East Central Railway and Others RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0044

Final Decision : Allowed

Judgement

Samarendra Pratap Singh, J.—As the issues raised in these five writ petitions namely C.W.J.C. Nos. 16359 of 2008, 16378 of 2008, 16551 of 2008, 19081 of 2008, 4432 of 2009 and 593 of 2009 are common, they are taken up for disposal together.

2. In these writ petitions, the petitioners pray refund of the entire amount deposited by them in bid with interest at market rate, as Railways failed to deliver the auctioned materials in time.

3. The petitioners are proprietary concerns engaged in sale and purchase of Railways scraps and other materials. Railways from time to time have been holding auction of its scraps and other waste materials, which are held at different places. The sale and purchase is governed by auction notice as well as Standard Conditions of Auction Sales. The auction notice and Standard Conditions of Auction sales have been annexed as annexures both by petitioners as well as by the Railways.

4. It is not in dispute that the petitioners were declared highest bidder in auction sales held by the Railways. As required under the auction notice and Standard Conditions of Auction Sales, the petitioners deposited the earnest money by fall of hammer on the same day. Further more pursuant to issuance of authorization letters the petitioners deposited balance amount within stipulated 20 to 50 days.

5. The case of the petitioners is that the Railways failed to make the delivery of

auctioned materials in time as per the terms and conditions. In some cases the deliveries were not affected even in the extended period sought by the Railways itself. The non-delivery of the materials in time has caused immense loss, as global recession had set in. The petitioners state that they are business people and they tend to lose, if their money remains blocked over a time, rendering them helpless to rotate their business.

6. The Railway in its counter affidavit has taken the plea that delivery of materials in question could not be affected on account of water logging, rainy season and unavailability of officials of different sections like Vigilance etc. who are necessarily required to be present at the time of delivery in order to check pilferage and ensure transparency. The maintainability of the writ petitions have also been challenged in view of existence of the arbitration clause for settling and resolving disputes.

7. Learned Counsels for the Railway submit that there are various disputed question of facts in this case. The disputed question of facts pointed out by the counsel for the Railways are as follows:

i) Whether actually Railways was in a position to give the delivery in view of the natural calamities?

ii) Whether the Railways could give delivery to only one of the auction purchaser at a time?

iii) Whether 3/4 agencies like RPF, Vigilance, Engineering Department, Purchase and Store Department etc. are required to give delivery jointly?

iv) Whether petitioner was required to seek extension for delivery period, more so the Railways are ready to waive the ground rent?

v) Whether the writ petitions have really any substance in them or it is merely a forced litigation by a businessman to make good of the loss starting at his face due to fall in the International Steel prices?

vi) Whether the Railways could have given the delivery of the stolen goods, had the petitioner performed his obligation under the contract?

8. In short the Railways contend that the petitioners cannot agitate refund of money much less with interest in the writ petitions in face of disputed questions of facts. Further, the writ petition is not maintainable as auction clause provides for settlement of dispute by way of arbitration. They have also drawn the court''s attention to Clause 7.1 of Standard Conditions of Auction Sale, which state as follows:

7.1 - No interest shall be liable to be paid by the Railways with any amount lying at the credit of the purchaser with the Railway administration.

9. In support of their contentions, learned Counsel for the Railways have relied upon decisions rendered in the case of Titagarh Paper Mills Ltd v. Orissa State

Electricity Board and Anr. : 1975 (2) SCC 436; State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., ; ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, Pimpri Chinchwad Municipal Corporation and Others Vs. Gayatri Construction Company and Another, and The Empire Jute Co. Ltd. and Others Vs. The Jute Corporation of India Ltd. and Another,

10. The petitioners in their reply state that the writ petition is fully maintainable as material facts for refund of money are not in dispute. This Court in writ jurisdiction can direct refund of money with interest. Learned Counsel for the petitioners submit that the Apex Court has held, that in appropriate cases, even if there is an alternative remedy the jurisdiction of the writ court is not completely ousted. In support of his contention, learned Counsel refers to the decisions (i) in the case of State of U.P. v. Md. Noor AIR 1958 SC 86; (ii) Syed Yakoob Vs. K.S. Radhakrishnan and Others, (iii) State of H.P. v. Gujrat Ambuja Cement 2005 (6) SCC 499; (iv) Indian Oil Corporation Ltd. Vs. The State of Bihar and Others and (v) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, (vi) State of Tripura v. Manoranjan Chakraborty 122 STC 594 (SC); (vii) ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

11. Having heard counsel for the parties, the following issues are arises for consideration before this Court.

i) Whether the writ petition is maintainable in view of the arbitration clause, and as such whether this writ court can issue mandamus directing the Railways to refund the money deposited by the petitioner with interest?

ii) Whether Clause 7.1 of the Standard Conditions of Auction Sale making Railways non-liable to pay interest in any circumstances is legally sustainable in the eyes of law?

12. Before I take up the issues involved in this case, it would be relevant to note in brief the terms of auction notice as well as the Standard Conditions of Auction Sale.

13. Clause 10 of auction notice states that the Standard conditions of auction of North Eastern Railway would be applicable to auctions bid. Clause 15 of the auction sale notice requires that on being declared successful the earnest money is to be deposited immediately with fall of hammer. Clause 16 provides that if the value of the bid exceeds Rs. 5 lacs, the balance money is to be deposited in two installments within 20 days. In case the successful bidder is not able to deposit the balance amount within 20 days, then after seeking necessary permission, the former can deposit the same within 50 days on payment of interest @ 12.25%.

14. Clause 16(Kha) further provides that if the amount is not deposited within 50 days, the earnest money will stand forfeited.

15. Clause 5.2 of the Standard Conditions of auction is very material and as it will have a direct bearing on the decision of the case, the same is quoted herein below:

In case the purchaser failed to remove the whole or part of the lot within the free time allowed the Controller of Stores reserves the right to cancel the sale of the lot or the balance lying unremoved and to re-sale the said material at the risk and cost of the purchaser. The purchaser shall, however, be entitled to refund of the price by him of the said material after deducting the ground rent up to the date of re-sale thereof and other expenses including auctioneer''s and the loss if any to which Railway may have been put on account of re-sale.

16. The condition relating to interest provided in Clause 7.1 of the Standard Conditions of Auction is quoted herein below:

No interest shall be liable to be paid by the Railways on any amount lying at the credit of the purchaser with the Railway administration.

17. Now I take up the issue No. 1. Whether writ could be issued for refund of money with or without interest, if the agreement entered into between the parties has an arbitration clause?

18. Clause 8 of the Standard conditions of auction refers to settlement of dispute. Clause 8.0 is quoted herein below:

In the event of any question/dispute of difference arising under these conditions or any in connection with the contract (except as to any matter or decision of which is specifically provided for any those conditions) the same shall be referred to the sole arbitrator appointed by the General Manager of the N.E. Railway Administration. It will be no objection that the arbitrator is government servant and that in the course of his duties as a government servant he has expressed views on all or on any of the matters in dispute or difference. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office by resignation, otherwise or becoming unable to act for any reason, the General Manager as aforesaid at the time of such transfer, vacation of office or inability to act shall appoint another person to act as arbitrator in accordance with terms of this agreement. Such person shall be entitled to proceed from the stage at which it was left by his predecessor. The award of arbitrator shall be final and binding on the parties to this Agreement.

19. It is no more resintegra that in appropriate cases the writ court under Article 226 and 227 of the Constitution of India can interfere in the contractual matter, if action of State and its instrumentality is violative of equality clause enshrined in Article 14. A writ court would also interfere in contractual matter in public interest to check favouratism and arbitrariness, and if actions of respondents are accentuated with bias and malice. The aforesaid propositions find expressions in decisions rendered in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, ; Noble Resources Ltd.

Vs. State of Orissa and Another, Food Corporation of India and Another Vs. SEIL Ltd. and Others, and Karnataka State Forest Industries Corporation Vs. Indian Rocks, The interference of writ courts in contractual matters have expanded over the years on account of expansion of welfare and social service functions of State.

20. The issue whether writ petition would be maintainable if the agreement between the parties provides for settlement of dispute by way of arbitration has fallen time and again for consideration of Apex Court in various cases. I will first take up the cases referred to by learned Counsel for the Railways in support of their claim that instant writ petitions are not maintainable, as the parties have an alternative forum for settlement of their dispute by way of arbitration in view of the settlement clause itself.

21. The Apex Court in the case of Titagarh Paper Mills (Supra) was considering whether the levy imposed by the Electricity Board could have been supported under Clause 13 of the agreement. In the aforesaid background, the Hon''ble Apex Court held that where the contract between the parties has an arbitration clause, then such question whether levy is justified under the agreement or not should be referred to arbitration and the High Court should refrain from entertaining writ petition under Articles 226 and 227 of the Constitution of India for adjudication of the same.

22. In the case of State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., the primary issue involved was whether the government was justified in deducting a particular sum which according to the respondent company is payable to it under the contract. The Apex Court in the aforesaid backdrop of facts held that when the contract itself provides for mode of settlement of dispute, party should follow and adopt that remedy and should not invoke the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution. The Hon''ble Apex Court further held that existent of an effective alternative remedy is a good ground for the court to decline to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

23. Learned Counsels for the Railways have emphatically referred to the case of ABL International Limited and Anr. v. Export Credit Guarantee Corporation of India Limited and Ors. reported in 2004 (3) SCC 556 particularly paragraph 14, which is quoted herein below:

It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the dispute agree on another mode of dispute resolution.

24. In the aforesaid case too, the Apex Court held that where there is dispute and alternative dispute resolution by way of arbitration has been provided, the recourse to any other remedy including filing of writ is unwarranted and impermissible.

25. The next decision in the line referred to by counsel for the Railways is of the case of Pimpri Chinchwad Municipal Corporation and Others Vs. Gayatri Construction Company and Another, In the aforesaid case the Apex Court held that merely because a statutory authority entered into a contract the same cannot become a statutory contract. The Hon''ble Apex approvingly quoted paragraph 11 of judgment in the case of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, wherein in paragraph 11 it has been held as follows:

11. ...The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

26. One of the ratios of the aforesaid decisions is that where the dispute relates to interpretation of terms and conditions of the contract in private law, writ petition under Article 226 should not be entertained.

27. The counsel for the Railways also referred to case of The Empire Jute Co. Ltd. and Others Vs. The Jute Corporation of India Ltd. and Another, wherein the Apex Court held that power of judicial review vested in the superior court is of undoubtedly wide amplitude, but when there exists an arbitration agreement, the writ court ordinarily would not exercise its discretionary jurisdiction to enter into a dispute.

28. Thus the logical inference is that the existence of a dispute would be a pre-condition for referring the matter to arbitration.

29. The interference of courts in contractual matter has widened over the years. The attainment of socio economic justice being a conscious goal of a welfare society and State policy, there is vast increase in frequency with which an ordinary citizen come into relationship of direct encounter with State Power holders. This has necessitated courts to interfere in its writ jurisdiction to secure equitable justice to its citizens even in contractual matters. This aspect is personified when a person trade or do business pursuant to the right flowing

from 19(1)(g) of the Constitution of India, as well as common law right. This necessitated restricting and structuring power of executive government to prevent discriminatory and arbitrary exercise of power.

30. The above principles find clear elucidation in the case of ABL International (Supra). In the aforesaid case, the Apex Court held that if the instrumentality of the State acts contrary to the public good and public interest; or acts unfairly, unjustly and unreasonably in its contractual or statutory obligation, it really acts contrary to the constitutional guarantee found under Article 14 of the Constitution of India. The court can interfere in such contractual matters, if the action of the State is discriminatory, arbitrary and unreasonable.

31. The Apex Court further held in paragraphs 26 and 27 of aforesaid judgment that a consequential relief to monetary claim is also maintainable in writ application. It would be relevant to quote paragraphs 26 and 27 of the aforesaid judgment:

26. Therefore, this objection must also fail because in a given case it is open to the writ court to give such monetary relief also.

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.

32. In the case of Noble Resources v. State of Orissa and Ors. (Supra), the Apex Court held that if action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ would be maintainable even in contractual field. It further held that while exercising contractual power also the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouratism on its part. The Hon''ble Supreme Court further held that a court can scrutinize an award of contract made either by government or its agencies. It can also interfere in contract matter in public interest or where the action of the government or its instrumentality is accentuated with malafide or ulterior motives. In paragraph 31, the Apex Court held that merely because there exist a disputed question of fact or an alternative remedy, the same by itself could not be sufficient for High Court to decline its jurisdiction. It would be relevant to quote paragraph 31 of the aforesaid judgment.

31. We, however, having regard to ABL International Ltd. (supra), do not accept

Dr. Dhawan''s contention that only because there exists a disputed question of fact or an alternative remedy is available, the same by itself would be sufficient for the High Court to decline its jurisdiction.

33. Further more in the case of Union of India v. Hindustan Development Corporation reported in 1994 SC 988; Food Corporation of India and Another Vs. SEIL Ltd. and Others, and Karnataka State Forest Industries Corporation Vs. Indian Rocks, the Apex Court held that court can interfere where the action of the State is arbitrary and discriminatory and also where it involves public law elements.

34. The Hon''ble Apex Court in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, observed that merely because the arbitration clause exists in the agreement, the court would not be obliged to refer the same for arbitration in appropriate cases. It would be relevant to quote paragraph 7 which runs as follows:

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned. Suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corporation v. Registrar of Trade Marks). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

35. The view expressed by the Hon''ble Apex Court in the case of Harbans Lal Sahnia (supra) was also referred to in three Judges decision rendered in the case of State of U.P. v. Gujrat Ambhuja Cement Limited (2005) 6 SCC 499.

36. However, counsel for the Railways submits that the decision rendered in the case of Harbans Lal Sahnia would not be binding as it was rendered without noticing a judgment of Coordinate Bench in the case of State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., He further states that it appears that counsel appearing for the parties had not brought the aforesaid judgment of State of U.P. v. Gujarat Ambhuja Cement Ltd (supra) to the notice of learned Judges in the case of Harbans Lal Sahnia. He further submits that the judgment in both the cases rendered by a Coordinate Bench of equal number of Judges would not take away the effect of the earlier judgment. In support of its

proposition, learned Counsel for the Railways relied upon a three Judges bench decision rendered by Hon''ble Apex Court in the case of Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs., In the aforesaid case the Hon''ble Apex Court held that subsequent decision of a Coordinate bench not noticing the earlier decision of another Coordinate bench would not be binding.

37. From backdrop of aforesaid decisions, it is apparent that the Supreme Court has dissuaded High Court from interfering in writ jurisdiction in contractual matter where there is an arbitration clause. However, from the ratios rendered in case of ABL International (Supra), Noble Resources (Supra), Harbans Lal Sahnia (Supra) and State of U.P. v. Gujarat Ambhuja Cement Ltd; it can be inferred that existence of an alternative remedy or an arbitration clause do not completely oust exercise of writ jurisdiction in appropriate cases. Further more, it is equally imperative that in any case, existence of dispute or difference would be a pre condition of sine qua non for referring the matter to arbitration.

38. From mere perusal of clauses of Standard Conditions of auction, it appears that if any question/dispute or difference arises between the parties, the same shall be referred to sole arbitrator appointed by the General Manager of North Eastern Railway (Admn.). Thus the pre-conditions for referring the matter to the sole arbitrator perceive existence of a dispute or questions of differences between the parties. In other words, if there is no apparent and real dispute between the parties, such matter may not necessarily have to be referred to the arbitrator.

39. With the aforesaid proposition in mind, the facts of the case are being once again noticed. The Railways themselves admit the following facts:

(i) the petitioners are the highest bidder in the auction bid (ii) they deposited the earnest money, (iii) they deposited the balance of money in stipulated time, (iv) they sought the delivery of the materials, (v) the Railways could not deliver the materials in time on account of rainy season, unapproachable road and their officials remaining otherwise occupied with the some other work. Even in extended time the Railway could not affect the delivery of the material. Thus, there is no dispute that contract was sealed and Railways failed to keep its promise in delivering the material.

40. Neither the auction notice nor the Standard Conditions of Auction contain any clause stipulating the consequences which may follow in case, the Railways failed to deliver the auctioned materials in time.

41. According to Railways, it has been an established procedure that in cases where Railways could not affect the delivery in time, then on request of bidders the time for the delivery could be extended without charging any ground rent.

42. In all these batch cases, the dispute at best raised by the Railways would relate to the aspect, whether Railways was prevented by sufficient reasons and force meajure from affecting delivery of the material. There is no dispute to the

fact that petitioners being selected in the bid, deposited the money within time and Railways failed to deliver the auction materials. There is no dispute up to the point that Railways failed to meet the dead line in delivering the auction materials to the petitioners. There is no disputed question for reconciliation as far as facts relevant for refund of money is concerned. As such the prayer of the writ petitioners for directing the respondents to refund its money cannot necessarily be relegated to arbitration. Consequently the petitioners succeed and are entitled to refund of money deposited by them within two months from today.

43. The prayer of the petitioners will also succeed in view of Clause 5.2 of the Standard Conditions of Auction. It provides that in case the purchaser after having paid full money in time, fails to lift the entire or some of the stocks, the Controller of Stores can sell the same in the market at the risk and cost of bidder, and the bidders/purchasers would be entitled for refund of the price after deduction of expenses incurred by the Railways in selling the materials including the ground rent.

44. Thus this clause too provides for refund of money on sale, if Railways sells the bid materials consequent to failure of a purchaser to lift the same. The Railways, however, would be entitled to deduction of expenditure incurred in selling the produce.

45. The case of the petitioners is on better footing, as in this case the Railways in spite of request of the petitioners could not affect delivery of materials even in extra time sought by them. It is not the case that the petitioner did not lift the materials, rather it is Railways which has failed to deliver the same. Thus on this score also the petitioners are entitled to refund of the full amount deposited by them.

46. Further more, the auction sale notice and Standard bidding conditions have provided penal clause where the purchaser defaults in its obligation, which may extend from imposition of fine to forfeiture of earnest money. For instance, Clause 15 requires the successful bidder to deposit the earnest money immediately failing which he would lose the bid. Clause 16 of the auction notice provides that in case, the petitioner is not able to deposit the balance amount within 20 days of the bid, he can seek extension of maximum of further 30 days time, and that too on payment of interest @ 12.25% on delayed payment. However, if he fails to deposit the aforesaid amount within extended period or 50 days of the bid, the same would stand cancelled and the earnest money would be forfeited. The Railways have provided stringent measures in auction conditions, where purchasers fail to perform their part of obligations. The various auction conditions unmistakenly point that time is essence of contract and failure on part of purchaser to adhere to time schedule would invite drastic and penal consequences. However, the auction notice and standard conditions of auction do not provide the consequences, when Railways fail to perform their part of obligation. Even though these conditions do not pin Railways to any penal consequences, the latter at least cannot withhold the petitioners'' money for no

fault of the latter.

47. As such, I direct the Railways to refund the entire money to the petitioners within two months from today, failing which they have to pay compensation.

48. The second issue is whether Clause 7.1 of the Standard Conditions of Auction Sale which is a non-statutory provision saves the Railways from paying interest on the amount lying at the credit of Railway Administration in all circumstances. From perusal of Clause 7.1 it would appear that no interest shall be liable to be paid by the Railways on any amount lying at the credit of the purchaser with the Railway Administration.

49. The issue is whether such clause is sustainable in the eyes of law. The Railways have exclusive monopoly in respect of sale of its scraps. It is common knowledge that contractors have to abide by or to subscribe to form of set of terms fixed in advance by one party having a monopoly and which is not open to discussion by other hand. A purchaser or contractor who participates in such bid or contract are unequally placed and not in a position to bargain or make objection to such unconscionable terms which are grossly unreasonable. In case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, the Apex Court has held "where any of the conditions imposed in pre-set of auction conditions is unreasonable as to shock the conscience of the court such terms are opposed to public policy and are void".

50. The Apex Court in case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress observed that it is permissible to assail and consider the validity of provision of an Act or regulation or rules as violative of Articles 14, 16(1), 19(1)(g) and 21 of the Constitution, if the same is arbitrary, unjust, unreasonable and unconstitutional.

51. In case of A. Satyanarayana and Others Vs. S. Purushotham and Others, the Apex Court has held that statutory provisions made in disregard of constitutional requirements and schemes are ultra vires.

52. Though this Court would not go into the dispute relating to interpretation of terms and conditions of the Standard Bidding Documents, it does have jurisdiction to look into the constitutionality or otherwise of the terms and conditions of the document.

53. Clause 7.1 deprives a bidder of claiming interest on its deposited amount even if he is not at fault and Railways unreasonably withhold the deposit for a number of years. This clause accords unequal and discriminatory treatment without any guidelines or opportunity of hearing. It provides no matter, however wrong, railways could be in locking money in course of trade, contract or commercial transaction, it cannot be penalized and asked to pay interest. Such stipulation in standard bidding conditions is arbitrary, unjust, and unreasonable. Thus I hold Clause 7.1 of the Standard Bidding Conditions as ultra vires and violative of Article 14 and 19(1)(g) of the Constitution of India.

54. This takes me to the last issue whether the petitioner would be entitled to claim of interest from the date of deposit. The stand of the Railways that they were prevented from sufficient reasons in effecting the delivery of the auctioned materials would involve scrutiny of facts and circumstances. Thus the plea for grant of interest would involve reconciliation of respective claims of both sides which could be best determined in an arbitration proceeding in terms of Clause 8 of the Standard Bidding Condition.

55. Summing up, this Court holds as follows:

(i) Existence of a dispute or differences is a pre-condition for referring a matter to arbitration in view of settlement clause;

(ii) There is no disputed question for reconciliation in the instant case as far as facts relevant for refund of money is concerned. Thus the writ applications are maintainable and petitioners are entitled to refund of deposited amount within two months, failing which they are liable to pay compensation;

(iii) Existence of an alternative remedy or an arbitration clause would not completely oust the jurisdiction of writ court in all the circumstances;

iv) Clause 7.1 of the Standard Bidding Documents which does not make Railway liable to pay interest in any situation is unreasonable and discriminatory and thus violative of Article 14 and 19(1)(g) of the Constitution. It is accordingly declared ultra vires.

v) The issue whether the petitioners would be entitled to interest on the deposited amount from the date of its deposit would involve scrutiny of facts, which could be well decided only in terms of settlement/arbitration clause provided in Clause 8 of the Standard Bidding Documents in view of the assertion of the Railways that they were prevented from sufficient reasons in effecting the delivery.

vi) The petitioners, if so advised, would be at liberty to take steps for appointment of an arbitrator.

56. For the reasons stated above, these writ petitions are allowed but with no order as to costs.

