

(2017) 03 BOM CK 0148
In the Bombay High Court
Case No : 2443 of 2013

Sujyoti India (P) Limited

APPELLANT

Vs

The Western Coalfields Limited, & Ors.

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Constitution of India, Article 14, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts

Citation : (2017) 03 BOM CK 0148

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : DIVISON BENCH

Advocate : M.G.Bhangde, R.M.Bhangde, S.P. Dharmadhikari, M.Anilkumar, A.S. Jaiswal, Shantanu Khedkar, C.S.Samudra

Judgement

1. By this petition, the petitioner seeks a direction that the letter dated 26.04.2011 issued by Mr.C.M.Shukla, G.M. (M.M.) WCL HQ. directing to declare that the withholding of payment of admitted dues of the petitioner stands revoked and further to direct the respondent no.1 to withdraw the said letter dated 26.04.2011 and to make the payment of Rs.1,46,66,383.33 to the petitioner with interest. The petitioner further prays to quash and set aside the report, dated 10.04.2015, of the Chief Vigilance Officer, Coal India Limited.

2. The petitioner is a Private Limited Company duly registered under the provisions of the Companies Act,1956. The petitioner is an authorized Distributor of respondent no.3Company. Pursuant to the offer made by respondent no.3SKF India Limited, Bombay and offer made by Industrial Bearing Services, the respondent no.1 had entered into a rate contract dated 11.12.1995 for supply of SKF imported bearings for a period of two years on the terms and conditions stated in the rate contract. It was agreed that the respondent no.1 shall place the order against the said rate contract and the petitioner and shall execute the same. It was further agreed that the respondent no.1 shall make payment

against the bills that would be raised for the aforesaid supplies to the petitioner directly. Initially, rate contract was for a period of two years with effect from 11.12.1995 till 31.12.1997. The duration of the said rate contract was extended by respondent no.1 from time to time and the last extension was up to 31.12.2011. As per the rate contract, the petitioner has supplied imported bearings as per the orders placed by respondent no.1 from time to time and, accordingly, respondent no.1 has made payment to the petitioner in respect of the supplies made by the petitioner to the respondent no.1. According to the petitioner from 1995 till 2010 there was no dispute between the parties. However one Mr C.M.Shukla, then G.M. (MM) WCL Headquarters, by letter dated 26.04.2011 addressed to Chief General Manager/ GMs of various areas under the respondent no.1, directed to withhold payment against the said rate contract to the petitioner. By letter dated 27.04.2011, Mr. Shukla, suspended the aforesaid rate contract with immediate effect. There was a lot of correspondence between the parties. The petitioner addressed various letters to the respondent no.1 for the alleged payment.

3. The petitioner, again, addressed a letter dated 10.09.2011 to Shri G.M. (MM) WCL, Nagpur, to withdraw the letter dated 26.04.2011 whereby payment of bills of goods/products supplied by petitioner was withheld and also to accept the supplies against the orders placed on the petitioner which were pending. Since the petitioner did not get any response to the letter dated 10.09.2011, the petitioner dashed off a letter dated 04.11.2011 to the higher authority i.e. Chairman and Managing Director, WCL, Nagpur, making similar request. The petitioner did not get a response to the said letter from respondent no.1. In this situation, the petitioner was constrained to lodge the complaint with the Chief Vigilance Officer, WCL, Nagpur vide letter dated 30.12.2011 against the action of Mr. Shukla, in directing withholding payment due to the petitioner, by letter dated 26.04.2011. The Chief Vigilance Officer conducted detailed investigation and submitted vigilance report to the Central Vigilance Commission, New Delhi. The Chief Vigilance Officer WCL, Nagpur found that the issuance of letter dated 26.04.2011 withholding of payment pursuant thereto, was without authority of law. The payment due to the petitioner was not released and continued to be withheld. During the pendency of the petition, there was some correspondence between the petitioner and respondent no.1. The respondent no.1 withdrew the impugned communication dated 26.04.2011 and accepted to release the payment after withdrawal of the instant petition vide communication/letter dated 12.12.2013, by respondent no.1. In view thereof, the petitioner withdrew the instant petition with liberty to revive the petition in case the WCL does not make payment of withheld amount. Thereafter, the petitioner received the amount of Rs.1,00,719.11 out of the total outstanding amount of Rs.1,46,66,383.33, on 30.12.2013. The petitioner was told that respondent no.1 had issued fresh instructions to withhold the payment. Again, there was a plethora of correspondence between the petitioner and the respondent no.1. Therefore, the petitioner was constrained to move Misc. Application No.33/2015 for restoration/

revival of Writ Petition No.2443/2013. At the time of hearing of the said MCA, statement was made on behalf of respondent no.1 that letter dated 12.12.2013 has been withdrawn. After hearing both sides, this Court by order dated 02.02.2015 allowed M.C.A. No.33/2015 and recalled its order dated 13.12.2013. Thus, according to petitioner, the impugned action on the part of respondent no.1 is unreasonable, irrational, unjust,unfair, arbitrary and violative of Article 14 of the Constitution of India.

4. Mr.M.G.Bhangde,learned senior counsel for petitioner vehemently argued that despite of the fact that the internal correspondence in the respondent's office surfaces that there were directions in the letters to withhold the payment of petitioner, the dues cannot be denied as the contract and law do not permit to do so. It is submitted that if there is breach of contract they should have filed a suit against the petitioner. In any case, dues payable to petitioner cannot be withheld. Our attention is invited to the letter dated 12.12.2013 wherein it is mentioned that the letter dated 26.4.2011 wherein it was advised to withhold the payment is withdrawn. It is further submitted that based on the said letter Writ Petition filed by respondent no.3 against respondent no.1 is withdrawn on 23.08.2011. However, after withdrawal the respondent no.1 did not keep its words and, therefore, the petitioner was constrained to complain to the Chief Vigilance Commission who issued directions to the respondent no.1 in favour of petitioner.

5. Mr.Bhangde submitted that the price fall clause was not acceptable to respondent no.3 and was acceptable to the petitioner only. For that reason, the respondent no.3 was made a party to the rate contract is that respondent no.1 can enter into a contract with manufacturer only and to ensure responsibility of respondent no.3 quality and genuinity of the supply made by the petitioner. He invited our attention to clause (7) of the Minutes of the Tender Committee meeting dated 15.11.1995, which reads thus,

"7. Supply Point: All orders will be placed on M/s Industrial Bearing Services, Nagpur with a copy to M/s SKF Bearings India Ltd. Bombay and supply will be made by M/s Industrial Bearing Services, Nagpur. However, M/s SKF Bearings India Limited Bombay will be responsible for quality and genuinity of the supply made by their Recognised Importers/authorised Stockist and will be referred in case of any dispute."

6. Mr. Bhangde submitted that the respondent no.3 never agreed for the price fall clause. It was only agreed by the petitioner. After the execution of the rate contract dated 11.12.1995, the respondent no.1 placed orders for purchase on the petitioner and accordingly, the petitioner gave price certificate to respondent no.1 in accordance with the price fall clause. It is submitted that this understanding between the petitioner, the respondent no.3 and respondent no.1 continued for about 16years uninterruptedly, as it was in consonance with the agreement between the parties. However, suddenly the respondent no.1 withheld payment of petitioner on the ground that respondent no.3 had breached the

price fall clause. Mr.Bhangde submitted that the enquiry was conducted by the Chief Vigilance Officer of respondent no.1. He however closed the enquiry in favour of petitioner and held that the price fall clause was not applicable to respondent no.3. Thereafter the Ministry of Coal, examined these facts and in agreement with Ministry of Coal, the Chief Vigilance Officer closed the case. According to Mr. Bhangde, the price fall clause was never applicable to respondent no.3 and the said aspect has been examined in detail by the Central Vigilance Commission of respondent no.1, the Ministry of Coal as well as respondent no.2Central Vigilance Commission. He contended that it is arbitrary on the part of the Chief vigilance Officer of Coal India Limited to enter into the same aspect again without there being any justifiable reason.

7. Mr. Bhangde, placed reliance upon the judgment in the case of General Manager, North East Frontier Railway and others vs. Dinabandhu Chakraborty reported in (1971) 3 SCC 883, to urge that the respondent no.1 cannot deduct the amount due under liability incurred by the petitioner unless it is established that, under a liability incurred by petitioner, the amount in question is due to the respondent. According to respondent no.1, the petitioner had sold the products/ goods to others, at less price than the products to respondent no.1, by committing breach of condition stipulated in clause 20 of the contract. In the abovesaid case, it is held that the Government cannot be a judge of its own cause in the absence of any statutory provision empowering it to act as such. He further urged that respondent no.1 cannot be a judge in its own cause and it cannot decide as to what is the exact difference in the amount to which the products were sold in lesser price to others than to respondent no.1 and what was the loss incurred to the respondent no.1 due to the said action on the part of petitioner. According to him, respondent no.1 ought to have approached to the Civil Court by filing a Civil dispute. The above said case law has a good bearing on the present case and it would be appropriate that the dispute gets resolved in a civil Court of law. In that case it is held in paragraph no.2 as under :

2.... the Controlling Officer is empowered to deduct any amount due under a liability incurred by the subscriber to the Government. Therefore before any deduction can be made, it must be established that under a liability incurred by the subscriber the amount in question is due to the Government, in the instant case the respondent has disputed his liability. His contention is that he was not responsible for the loss in question. Under the Provident Fund Rules, no authority is constituted for deciding any dispute that might arise between the subscriber and the Government as regards any alleged incurring of liability not as regards its quantum. Therefore, the only forum in which these disputes can be decided is the Civil Court. The Government cannot be a judge in its own cause in the absence of any statutory provisions empowering it to act as such. Hence the High Court was right in its conclusion that the action taken by the Government is an arbitrary one."

8. In that case, the Hon"ble Apex Court reached a finding that before any

deduction can be made it must be established that under a liability incurred by the subscriber the amount in question is due to the Government. Likewise in the instant case, the respondent no.1 cannot make any deduction with regard to the difference in the amount between the original sale price and the amount to which the products were sold at lower price to others by the petitioner. It is incumbent upon respondent no.1 to establish that a particular amount is due to the petitioner. For that purpose, in order to decide the said dispute, it is necessary to approach the Civil Court to resolve the said dispute and the respondent no.1 cannot be a judge in its own cause. The above said case law has a good bearing on the present case and it would be appropriate that the dispute gets resolved in the civil court of law.

9. Mr.Bhangde, relied upon the judgment in the case of State of Karnataka vs. Rameshwara rice Mills reported in (1987) 2 SCC 160. It is held that on a plain reading of the words in clause of the contract, it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. In the present case, clause 12 of the contract between respondent nos.1 and 3 does not indicate that the dispute be resolved by respondent no. 1. Hence it is necessary to refer the dispute to the Civil Court.

10. Mr.Bhangde took us through the contents in the case of J.G. Engineers Pvt.ltd. vs. Union of India and another reported at (2011) 5 SCC 758. Para Nos.19 and 20 read thus:

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

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

"Even assuming for argument"s sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the other officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication

should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12. We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed."

11. The aforesaid caselaw is applicable to the facts of the present case. In the instant case clause 12 of the contract reads as under :

Clause: 12:Price Fall clause: The prices being offered for the stores under this contract by the contractor shall in no event exceed the lower price at which the contractor sells stores of identical description to any other organisation during the period of the contract.

If at any time, during the said period, the contractor reduces the sales price of such stores, or sells such stores to any other organisation at price lower than the price, chargeable under this contract, he shall forthwith notify such reduction or sale to the concerned consignee under intimate to the General Manager (Purchase) WCL, MMW, Coal Estate, Civil Lines, Nagpur 440 001 and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale, shall stand correspondingly reduced."

12. In view of the aforesaid circumstances it would be proper that the matter be decided by the Civil Court, in order to find out as to for how much amount the stores/products were sold to other organizations and to find out the difference in sale price of the stores/products so that the sale price can be correspondingly reduced by the petitioner.

13. Mr. Bhangde, relied upon the judgment in the case of M/s H.M. Kamaluddin Ansari and Co. vs. Union of India and others, reported in (1983) 4 SCC 417. The aforesaid case has a good bearing on the present case. The respondent no.1 can no doubt recover dues from the petitioner after decision in the Civil Court. He further relied upon the judgment in the case of Iron & Hardware (India) Co. vs. Firm Shamlal & Bros, reported in AIR 1954 BOMBAY 423, more particularly paragraph 7 which reads thus,

7.In my opinion, with respect to the learned Judge, greater emphasis should be placed on the expression "any pecuniary liability" rather than on the expression "whether ascertained or to be ascertained". Before it could be said of a claim that it is a debt, the Court must be satisfied that there is a pecuniary liability upon the person against whom the claim is made, and the question is whether in law a person who commits breach of contract become pecuniarily

liable to the other party to the contract. In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party.

As already stated, the only right which he has is the right to go to a court of law and recover damages,. Now damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach, is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what the liability is. But till that determination there is no liability at all upon the defendant."

In the instant case, it would be appropriate to file a civil suit in order to assess the dues.

14. Mr.Bhangde, further relied upon the judgment in the case of Syed Maqbool Ali vs. State of Uttar Pradesh and another, reported in (2011) 15 SCC Page 383. Para no.11 thereof reads as under :

" 11. When a writ petitioner makes out a case for invoking the extra ordinary jurisdiction under Article 226 of the Constitution, the High Court would not relegate him to the alternative remedy of a civil court, merely because the matter may involve an incidental examination of disputed questions of facts. The question that will ultimately weigh with the High Court is this : Whether the person is seeking remedy in a matter which is primarily a civil dispute to be decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. (See the decisions of this court in ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd - 2004(3) SCC 553 and Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers - 2008(12) SCC 500]"

According to Mr. Bhangde, it would be appropriate that the controversy gets resolved by filing Civil Suit in the instant case.

15. Per contra, learned senior counsel Mr.S.P.Dharmadhikari with Mr. M.Anilkumar for respondent no.1 contended that the decision to release the withhold payment was taken based on office memorandum dated 22.08.2013 of respondent no.2 by which the respondent no.1 was informed that the case has been examined by the Commission and advised that the serving official of tender committee of respondent no. 1 may be suitably warned for failure to enforce a suitable fall rate clause which could by the respondent no.3 to lower rates if these items were supplied to any other organization at a rate lower than the rate of respondent

no.1. This memorandum meant that the respondent no.2 had completed its investigation and finally closed the case. Therefore, respondent no.1 decided to release the withheld amount due to the petitioner and the petitioner withdrew the Writ Petition No.2443/2013 accordingly. Shri Dharmadhikari submitted that respondent no.1 duly advised all its officers of area offices to release the withheld amount. It is submitted that when respondent no.1 communicated Vigilance Department, the Vigilance Department brought it to the notice of respondent nos.1 and 2, vide letter dated 28.10.2013 that the case may not be treated to be closed. The said information was given by the Vigilance Department of respondent no.1, was immediately brought to the notice of the competent Authority of respondent no.1, who in turn, directed that the release of withhold amount may be kept on hold till the case is finalized by respondent no.2 and accordingly, the directives were sent to office of respondent no.1 to keep the matter in abeyance till the case is finalised by respondent no.2. It is submitted that in the instant petition, an attempt has been made to recover the alleged dues which is the subjectmatter of civil suit. It is submitted that the present matter is not maintainable under Article 226 of the Constitution of India since it involves interpretation of various contractual terms and conditions which warrants leading of evidence.

16. Mr. Dharmadhikari urged that the operation of Clause 12 of the contract is, in fact, on the price sale. The petitioner has sold the products at a lower price than quoted to other organization and thus committed breach of contract. According to Mr. Dharmadhikari respondent no.1 was constrained to reserve the decision of closing the file of petitioner and was compelled to withhold the payment due to the petitioner. Mr.Dharmadhikari submitted that it is a pure commercial contract without public law involved in it. The contract of supply of products in which there is a price fall clause wherein price fall is apparent, the petitioner supplied to other organizations at lower rates than to respondent no.1.

17. According to Mr. Dharmadhikari, the petitioner cannot file writ petition claiming dues. He submitted that petitioner ought to have filed a civil suit in court of law as there are several disputed questions of fact regarding the money claim.

18. In support of his contention, Mr Dharmadhikari, placed reliance upon the judgment in the case of State of U.P. and others vs. Bridge & Roof co. (India) Ltd. reported in (1996) 6 SCC Page 22, wherein it is held by the hon"ble Apex Court, in para nos. 15 and 16 as under :

" 15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e. in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8D(1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is not statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition....."

19. There is certainly substance in the contentions of Mr. Dharmadhikari that there are several disputed questions of facts.

20. Mr.Dharmadhikari contended that the contract is between WCL and M/s SKF Bearings India Limited. Whatever arrangement is there it is between them. The respondent no.1 claims privity of contract with SKF/respondent no.3 and terms and conditions are not placed on record on which the petitioner was appointed by respondent no.3. Shri Dharmadhikari took us through the clauses of the rate contract. Clause 20 as regards penalty reads as under :

20. Penalty: In the event of failure to delivery, despatch the stores within the stipulated date/period of effect suppliers in accordance with the samples and/or specifications mentioned in the supply order and in the event of the breach of any of the terms and conditions mentioned in the supply order the "Western Coalfields Limited shall be entitled at its option either :

(a)...

(e) Whenever under this contract any sum of money is recoverable from and payable by the contractor the WCL shall be entitled to recoverable such sum by appropriating in part on any whole by deducting any sum due or which at any time thereafter may become due to the successful tenderer in this or any other contract should this sum be not sufficient to cover the full amount recoverable the successful tendered shall pay the full amount to the WCL....."

21. Mr. Dharmadhikari, learned senior counsel invited our attention of clause (f) which reads thus :

Whenever under the contract a sum of money is recoverable from and payable by you, Western Coalfields Limited, shall be entitled to recover such sum by appropriating, in part or whole by deducting any sum or which at any time thereafter, may be due to you in this or any other contract, with Western Coalfields Limited or any CIL's subsidiary company. Should this sum be not sufficient to cover the full amount recoverable, you shall pay to Western Coalfields Limited, on demand the remaining amount."

22. According to Mr.Dharmadhikari, the respondent no1. is entitled to recover the amount from the petitioner. It is submitted that the petitioner is the agent/dealer of respondent no.3M/ s SKF Bearings and the acts of principal i.e. Respondent no.3 will bind the petitioner. The respondent no.3 has filed Writ Petition No.1047/2011 on similar grounds against the respondent no.1, which was disposed of on 23.08.2011 by the principal seat of this Court. According to Mr. Dharmadhikari the petitioner cannot claim same relief once petition is withdrawn.

The petitioner has to claim against respondent no.1. Mr. Dharmadhikari pointed out the letter dated 29.01.2011 addressed to General Manager (MM) WCL by SKF (respondent No.3) stating that "quotes published by them and the offers made to IOC were only to an "Invitation to Offer". It was further mentioned that when an offer is made by any prospective buyer in pursuance of an invitation to offer it is not obligatory on the part of seller making the invitation to offer to accept such offer from the buyer. Thus only in the event of the offer made by IOC being accepted by SKF and goods (identical to those sold to WCL) being supplied and sold in furtherance thereof, the WCL Rate contract can be said to be breached and not before it."

23. Mr. Dharmadhikari stated that according to petitioner the products were not supplied and sale was not effected and it was simply an offer to the petitioner from the prospective buyers hence there was no breach of rate contract. He however stated that once the price of product is reduced by petitioner, even if it is not sold is immaterial and sufficient to attract the price fall clause of the contract and in case if the product is sold it is against the contract. In that event, civil suit would be the only remedy for the petitioner to plead its case and claim it dues and not to file the Writ Petition. Mr. Dharmadhikari stated that the respondent no.1 had privity of contract with respondent no.3 only and the respondent no.3 had unsuccessfully made a challenge before the principal seat of this Court by filing Writ Petition No.1047/2012 and then withdrew it. It is stated that neither the petitioner who is an agent of respondent no.3 can seek contract against respondent no.1 by this petition. Mr Dharmadhikari urged that there are several disputed question of fact involved which can be resolved by way of civil suit.

24. Shri Dharmadhikari, learned senior counsel, relied upon the judgment in the case of Joshi Technologies International Inc. vs. Union of India and others reported in (2015) 7 SCC 728 wherein guidelines are given by the Hon"ble Apex Court as to in which cases normally this court should not exercise writ jurisdiction. Para No.69 reads thus:

69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. AT the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. Zit also follows that under the following circumstances, "normally", the court would not exercise such a discretion.

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

25. Learned senior counsel Shri Anand Jaiswal with Shri S. Khedkar for respondent no. 3 supported the case of the petitioner. He submitted that no price

certificate was given by respondent no.3 and it was given by the petitioner only. As stated in the letter dated 11.12.1995 the contract is acted upon by the parties. It was pointed out that all work orders were given under these contract only.

26. Significantly, the Writ Petition filed by Respondent no.3 at Bombay for same relief, was disposed of for filing Civil Suit. It is worthy to note that the petitioner is respondent no.3 here and is supporting the claim of petitioner. Thus, there is change in stance of that petitioner. The claims of petitioner and respondent no.3 arise out of the same contract and same supplies. Pertinently, the claim can be either by respondent no. 3 or by petitioner and not by both. Privity of contract between parties, status of petitioner before us qua the respondent no.3 and reach of price fall clause are the main issues before us. Answer thereto is also contingent upon actual understanding between the parties which can be evidenced in actual files, correspondence and previous history. Definitely, all this requires an opportunity to lead evidence and cross-examine.

27. Considering the rival contentions of all the parties, it is manifest that there are several disputed question of facts involved in the present case and Civil Suit in the court of law is the only remedy and the dispute cannot be resolved in writ jurisdiction. In fact respondent no.3 had filed Writ Petition bearing No. 1047/2011 on the same lines which was withdrawn by him. Hence this Writ Petition is not tenable. We are of the opinion that the guidelines issued by the Hon'ble Apex Court in the caselaws cited and relied upon by respondent no.1, are clearly applicable to the facts and circumstances of the present case.

28. In view of the aforesaid facts and circumstances, the Writ Petition stands disposed of. Rule discharged.