

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 6712 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi. --- --- **Petitioner**

Versus

1. The State of Jharkhand.
2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With

W.P. (T) No. 5291 of 2023

M/s. NCC Ltd. (formerly Nagarjuna Construction Company Ltd.), a company incorporated and registered under the Companies Act, 1956, having its registered office at NCC House, Madhapur, Hyderabad, 500081, through its authorized signatory, Piyush Kumar Gupta, son of Paresh Chandra Sahu, aged about 31 years, resident of Main Road, Chauka, P.O. & P.S. Chauka, District Seraikela Kharsawan, Jharkhand.

--- --- **Petitioner**

Versus

1. State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa, District Ranchi-834004, Jharkhand.
3. Finance Controller, JBVNL having its office at Engineers Building,

- P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
4. Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
 5. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District -Ranchi-834004, Jharkhand.

--- --- Respondents

With
W.P. (T) No. 5341 of 2023

M/s. NCC Ltd. (formerly Nagarjuna Construction Company Ltd.), a company incorporated and registered under the Companies Act, 1956, having its registered office at NCC House, Madhapur, Hyderabad, 500081, through its authorized signatory, Piyush Kumar Gupta, son of Paresh Chandra Sahu, aged about 31 years, resident of Main Road, Chauka, P.O. & P.S. Chauka, District Seraikela Kharsawan, Jharkhand.

--- --- Petitioner

Versus

1. State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa, District Ranchi-834004, Jharkhand.
3. Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
4. Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
5. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District -Ranchi-834004, Jharkhand.

--- --- Respondents

With
W.P. (T) No. 5574 of 2023

M/s. NCC Ltd. (formerly Nagarjuna Construction Company Ltd.), a company incorporated and registered under the Companies Act, 1956, having its registered office at NCC House, Madhapur, Hyderabad, 500081, through its authorized signatory, Piyush Kumar Gupta, son of Paresh Chandra Sahu, aged about 31 years, resident of Main Road, Chauka, P.O. & P.S. Chauka, District Seraikela Kharsawan, Jharkhand.

--- --- Petitioner

Versus

1. State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa, District Ranchi-834004, Jharkhand.
3. Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
4. Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
5. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District -Ranchi-834004, Jharkhand.

--- --- Respondents

With

W.P. (T) No. 5720 of 2023

M/s. Anvil Cables Private Limited, a Private Limited Company incorporated and subsisting under the provisions of the Companies Act, 2013, having its Registered Office at 102 Krishna, 224, AJC Bose Road, P.O. & P.S. – A.J.C. Bose Road, District – Kolkata-700017 through its Constituted Attorney, Mr. Shailendra Kumar Singh, aged about 50 years, son of Shri Rabindra Nath Singh, resident of Dewanji Street, Hooghly, P.O. and P.S.-Rishra, District-Hooghly, Pin Code – 711228, West Bengal.

--- --- Petitioner

Versus

1. The State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, through its Managing Director, having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
4. General Manager (Project and Financial Management), JBVNL, having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
5. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi, Jharkhand-834004.

--- --- Respondents

With
W.P. (T) No. 5721 of 2023

M/s. Anvil Cables Private Limited, a Private Limited Company incorporated and subsisting under the provisions of the Companies Act, 2013, having its Registered Office at 102 Krishna, 224, AJC Bose Road, P.O. & P.S. – A.J.C. Bose Road, District – Kolkata-700017 through its Constituted Attorney, Mr. Shailendra Kumar Singh, aged about 50 years, son of Shri Rabindra Nath Singh, resident of Dewanji Street, Hooghly, P.O. and P.S.-Rishra, District-Hooghly, Pin Code – 711228, West Bengal.

--- --- Petitioner

Versus

1. The State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, through its Managing Director, having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
4. General Manager (Project and Financial Management), JBVNL, having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
5. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.

--- --- Respondents

With
W.P. (T) No. 5722 of 2023

M/s. Anvil Cables Private Limited, a Private Limited Company incorporated and subsisting under the provisions of the Companies Act, 2013, having its Registered Office at 102 Krishna, 224, AJC Bose Road, P.O. & P.S. – A.J.C. Bose Road, District – Kolkata-700017 through its Constituted Attorney, Mr. Shailendra Kumar Singh, aged about 50 years, son of Shri Rabindra Nath Singh, resident of Dewanji Street, Hooghly, P.O. and P.S.-Rishra, District-Hooghly, Pin Code – 711228, West Bengal.

--- --- Petitioner

Versus

1. The State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.

2. Jharkhand Bijli Vitran Nigam Limited, through its Managing Director, having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
4. General Manager (Project and Financial Management), JBVNL, having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S. Dhurwa, District -Ranchi, Jharkhand-834002.
5. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.

--- --- Respondents

With

W.P. (T) No. 5773 of 2023

M/s. NCC Ltd. (formerly Nagarjuna Construction Company Ltd.), a company incorporated and registered under the Companies Act, 1956, having its registered office at NCC House, Madhapur, Hyderabad, 500081, through its authorized signatory, Piyush Kumar Gupta, son of Paresh Chandra Sahu, aged about 31 years, resident of Main Road, Chauka, P.O. & P.S. Chauka, District Seraikela Kharsawan, Jharkhand.

--- --- Petitioner

Versus

1. State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi-834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa, District Ranchi-834004, Jharkhand.
3. Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
4. Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa, District- Ranchi-834004, Jharkhand.
5. The General Manager (R-APDRP), JBVNL, having its office at Engineers Building, HEC, P.O. & P.S. Dhurwa, District -Ranchi-834004, Jharkhand.

--- --- Respondents

With

W.P. (T) No. 6471 of 2023

East India Udyog Ltd., Registered Office at C-8, Sector 3, Noida, Gautam Buddha Nagar, 201301, Uttar Pradesh through its authorized

signatory, Senior Manager Projects, Shri Ashwani Pandey, son of Late Vijay Bahadur Pandey, Resident of Sharma Mohalla, Devi Nagar, Hesag, P.O. & P.S.-Hatia, Ranchi 834003.

--- --- Petitioner

Versus

1. State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi, 834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, (JBVNL) through Secretary a company incorporated under the Companies Act, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
4. Chief Engineer (R.E.), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
5. The General Manager (R-APDRP), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand

--- --- Respondents

With

W.P. (T) No. 6524 of 2023

East India Udyog Ltd., Registered Office at C-8, Sector 3, Noida, Gautam Buddha Nagar, 201301, Uttar Pradesh through its authorized signatory, Senior Manager Projects, Shri Ashwani Pandey, son of Late Vijay Bahadur Pandey, Resident of Sharma Mohalla, Devi Nagar, Hesag, P.O. & P.S.-Hatia, Ranchi 834003.

--- --- Petitioner

Versus

1. State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi, 834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, (JBVNL) through Secretary a company incorporated under the Companies Act, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
4. Chief Engineer (R.E.), JBVNL, having its office at Engineering

Building, HEC, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand

5. General Manager (Rural Project), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand --- --- **Respondents**

With

W.P. (T) No. 6529 of 2023

East India Udyog Ltd., Registered Office at C-8, Sector 3, Noida, Gautam Buddha Nagar, 201301, Uttar Pradesh through its authorized signatory, Senior Manager Projects, Shri Ashwani Pandey, son of Late Vijay Bahadur Pandey, Resident of Sharma Mohalla, Devi Nagar, Hesag, P.O. & P.S.-Hatia, Ranchi 834003.

--- --- **Petitioner**

Versus

1. The State of Jharkhand, through the Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi, 834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, (JBVNL) through Secretary a company incorporated under the Companies Act, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
4. Chief Engineer (R.E.), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
5. General Manager (Rural Project), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand --- --- **Respondents**

With

W.P. (T) No. 7060 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi. --- --- **Petitioner**

Versus

1. The State of Jharkhand.

2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With

W.P. (T) No. 7066 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi.

--- --- **Petitioner**

Versus

1. The State of Jharkhand.
2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With

W.P. (T) No. 7069 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi. --- --- **Petitioner**

Versus

1. The State of Jharkhand.
2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With

W.P. (T) No. 7074 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi. --- --- **Petitioner**

Versus

1. The State of Jharkhand.
2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers

- Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
 6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With
W.P. (T) No. 7076 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi. --- --- **Petitioner**

Versus

1. The State of Jharkhand.
2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With
W.P. (T) No. 7079 of 2023

Sri Gopikrishna Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at 30/B, Vengalrao Nagar, Hyderabad, P.O., P.S. & District Hyderabad, Telangana, through its Authorized signatory Shri Shamshad Ali, aged about 54 years, S/o Late Md. Shafiullah, R/o Raza Colony, Kanta Toli, P.S. Lower Bazar, P.O. Ranchi & District Ranchi. --- --- **Petitioner**

Versus

1. The State of Jharkhand.

2. The Secretary, Department of Energy, Government of Jharkhand, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur & District Ranchi.
3. The Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act, having its office at Engineers Building, P.O., P.S. Dhurwa, District-Ranchi, Jharkhand, through its Managing Director, having its place of business at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
4. The Finance Controller, JBVNL having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
5. The Chief Engineer (R.E.), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.
6. The General Manager (Rural Project), JBVNL, having its office at Engineers Building, P.O. & P.S. Dhurwa & District Ranchi.

--- --- **Respondents**

With
W.P. (T) No. 160 of 2024

East India Udyog Ltd., Registered Office at C-8, Sector 3, Noida, Gautam Buddha Nagar, 201301, Uttar Pradesh through its authorized signatory, Senior Manager Projects, Shri Ashwani Pandey, age 37 years, son of Late Vijay Bahadur Pandey, Resident of Sharma Mohalla, Devi Nagar, Hesag, Ranchi 834003.

--- --- **Petitioner**

Versus

1. State of Jharkhand, through the Department of Energy, through Secretary, having its office at SBI Building, Project Bhawan, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi, 834004, Jharkhand.
2. Jharkhand Bijli Vitran Nigam Limited, (JBVNL) through Secretary a company incorporated under the Companies Act, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
3. Finance Controller, JBVNL having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
4. Chief Engineer (R.E.), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand
5. General Manager (Rural Project), JBVNL, having its office at Engineering Building, HEC, P.O. Dhurwa, P.S. Jagannathpur, Ranchi-834004, Jharkhand

--- --- **Respondents**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Petitioners : Mr. Ajit Kumar Sinha, Sr. Advocate
Mrs. Debolina Sen Hirani, Advocate
Mr. Akshat Vachher, Advocate
Ms. Kashyapi, Advocate
Ms. Abhiti Vachher, Advocate
[in W.P.T. Nos. 6471/2023, 6524/2023,
6529/2023 & 160/2024]

: Mr. Ajit Kumar, Sr. Advocate
Ms. Tanya Singh, Advocate
[in WPT Nos. 6712/2023, 7060/2023, 7066/2023,
7069/2023, 7074/2023, 7076/2023 & 7079/2023]

: Mr. Ajit Kumar, Sr. Advocate
Mr. Rohitashya Roy, Advocate
Mr. Vibhor Mayank, Advocate
[in WPT No. 5773/2023, 5291/2023,
5341/2023 & 5574/2023]

: Mr. M.S. Mittal, Sr. Advocate
Mr. Salona Mittal, Advocate
Ms. Lavanya Gadodia, Advocate
[in WPT No. 5720/2023, 5721/2023
& 5722/2023]

For the Resp.-State : Mr. Rajiv Ranjan, Advocate General
Mr. Ashok Kumar Yadav, Sr. S.C.-I
Mr. Aditya Kumar, A.C. to Sr. S.C.-I
Ms. Aparajita Chatterjee, Advocate
Ms. Komal Tiwari, Advocate

For the Resp.-JBVNL : Mr. Manish Kumar, Sr. S.C.
Ms. Nirupama, AC to Sr. S.C.

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9th April 2024

Per, Shree Chandrashekhar, A.C.J.

In this batch of writ petitions, the petitioner-Firms are seeking reimbursement of the GST paid by them for the procurement of raw materials, intermediary components etc. and the bought-out items dispatched directly from the sub-vendors to the work site. In respect to these transactions that are categorized as indirect transactions, the

respondents have put up an objection that the GST impact on the indirect transactions is not reimbursable and barred under clause 31 of the General Conditions of Contract (hereinafter referred as GCC).

2. Mr. Ajit Kumar Sinha, the learned senior counsel appearing for the East India Udyog Limited which has filed W.P(T) Nos.6471 of 2023, 6524 of 2023, 6529 of 2023 and W.P(T) No.160 of 2024 made the lead argument on behalf of the petitioner-Firms. To avoid the repetition, we shall reproduce the relief-clause in the writ petition filed by each of the petitioner-Firms.

W.P.(T) No.6529 of 2023:

“a) For issuance of an appropriate writ, order, or direction, declaring the action of the Respondent no.2 in withholding amount of GST impact, as manifestly arbitrary, violative of the doctrine of promissory estoppel and contrary to Article 14 of the Constitution of India.
b) For issuance of an appropriate writ, order or direction, declaring that being satisfied and in view of introduction of GST during continuance of the ongoing Contract, the liability to pay GST shall be that of the Respondents in terms of the work order incorporating the impact of GST and as such the Respondents be directed to forthwith pay the withheld amount as applicable to MSME organizations and relevant provisions of law against various bills of the Petitioner pending since July, 2019.
c.) For issuance of an appropriate writ, order or direction, holding and declaring that in view of the Work Order incorporating the impact of GST, read with the bid document, the Petitioner is entitled for impact of GST along with interest as applicable to MSME organizations in accordance with the MSME Act and relevant provisions of law, since the GST liability has been discharged by the Petitioner out of its own pocket and can be viewed on the State GST portal which has been illegally withheld by the Respondent no.2 from July 2019 onwards, thus doubly penalizing the Petitioner, i.e., on one hand, the Petitioner is regularly depositing the GST amount as a statutory requirement and on the other hand, the Respondent No.2 is withholding the GST from the Petitioner's invoices.
d) For issuance of an appropriate writ, order, or direction holding and declaring that the Petitioner is entitled for reimbursement of GST due to the fact that the Respondent No.2 has deposited TDS on CGST and SGST @ 1% each of the Gross Value of GST invoices from the date of applicability i.e., 01.10.2018.
e) For issuance of any other appropriate writ(s)/order(s)/directions(s) as Your Lordships may deem just and proper in the facts and circumstances of the case for imparting substantial justice to the Petitioner.”

3. In W.P(T) Nos.5720 of 2023, 5721 of 2023 and 5722 of

2023, Mr. M.S Mittal, the learned senior counsel advanced the arguments on behalf of M/s Anvil Cables Private Limited.

W.P.(T) No. 5720 of 2023:

- (i) For issuance of an appropriate writ, order or direction, including a writ in the nature of declaration, declaring the action of the Respondent JBVNL in withholding amount of GST impact of Rs.8,32,93,388.43 in respect of the Giridih Project under the Din Dayal Upadhyay Gram Jyoti Yojna while paying bills from the month of July, 2017, is wholly arbitrary, unreasonable in as much as the Respondent JBVNL was bound by the circulars issued by Rural Electrification Corporation which mandated payment of increase in contract price due to introduction of GST to the contractor for the entire contract, i.e., including bought-out transactions / sales in transit, and further because similar benefit has been extended to other contractors under the same project;
- (ii) For issuance of an appropriate writ, order or direction, including a writ in the nature of declaration, declaring that in view of introduction of GST during the continuance of the ongoing Contract, the liability to pay GST shall be that of the Respondents Employer in as much under the GST regime, the liability of payment is on 'supply' of goods, i.e., when the Petitioner supplied the goods to the Respondent JBVNL.
- (iii) For issuance of an appropriate writ, order or direction, including a writ in the nature of mandamus, directing the Respondent JBVNL to make payment of Rs. 8,32,93,388.43 in respect of the Giridih Project (under the DDUJGY Scheme monitored by REC), paid by the Petitioner due to introduction of GST and which has been illegally withheld by the Respondents from July 2017 onwards.
- (iv) For issuance of any other appropriate writ(s)/ order(s)/ direction(s) as Your Lordships may deem just and proper in the facts and circumstances of the case for imparting substantial justice to the Petitioner.

4. Mr. Ajit Kumar, the learned senior counsel appears for Sri Gopikrishna Infrastructure Private Limited which has filed W.P(T) Nos.6712 of 2022, 7060 of 2023, 7066 of 2023, 7069 of 2023, 7074 of 2023, 7076 of 2023 and W.P(T) No.7079 of 2023.

W.P.(T) No. 6712 of 2023:

- i. For issuance of a writ of Declaration declaring that the action of the respondent JBVNL in withholding the payment of amount of GST impact from the initiation of the work i.e. 09.03.2016 till the completion of work i.e. 30.06.2019 as manifestly arbitrary, illegal, in contravention of Article 14 of the Constitution as well as violative of the doctrine of promissory estoppel.
- ii. For further declaring that in view of the introduction of GST during the continuance of ongoing contract, the liability to pay GST amounts shall be that of the respondents particularly as per the terms & conditions

of the tender and as such, the respondent JBVNL be directed to forthwith pay the withheld amount from various bills of the petitioner from the initiation of the work i.e. 09.03.2016 till the completion of work i.e. 30.06.2019.

iii. For holding and declaring that in view of the terms and conditions contained in the Bid document, the Petitioner is entitled for impact of GST along with interest from March 2016 onwards, since the GST liability has been discharged by the Petitioner out of its own pocket and can be viewed on the State GST Portal, thus, doubly penalizing the petitioner i.e., on one hand, the petitioner is regularly depositing the GST amount as a statutory requirement and on other hand, the Respondent is withholding the GST amount from the Petitioner's tax invoice.

iv. For holding and declaring that the Petitioner is entitled for reimbursement of GST amount due in view of the fact that Respondent have deposited TDS on CGST and SGST @ 1% each of gross value of GST invoice from the date of applicability i.e. from 01/09/2018.

AND/OR

The petitioners pray for issuance of any other appropriate writ(s), order(s), Direction(s) for which the petitioner is found legally entitled to and also for doing conscientious justice to the petitioners.

5. Mr. Rohitashya Roy, the learned counsel has appeared for M/s NCC Limited which filed W.P.(T) Nos. 5773 of 2023, 5291 of 2023, 5341 of 2023 and 5574 of 2023.

W.P.(T) No. 5291 of 2023:

(a) For issuance of an appropriate writ, order or direction, declaring the action of the Respondent in withholding amount of GST impact while paying bills from the month of September, 2019, as manifestly arbitrary, violative of the doctrine of promissory estoppel and contrary to Article 14 of the Constitution of India;

(b) For issuance of an appropriate writ, order or direction, declaring that being satisfied and in view of introduction of GST during the continuance of the ongoing Contract, the liability to pay GST shall be that of the Respondents in terms of the work order incorporating the impact of GST and as such, the Respondents be directed to forthwith pay withheld amount from various bills of the petitioner since September, 2019.

(c) For issuance of an appropriate writ, order or direction, holding and declaring that in view of the Work Order incorporating the impact of GST, read with the Bid document, the Petitioner is entitled for impact of GST along with interest from September, 2019 onwards, since the GST liability has been discharged by the Petitioner out of its own pocket and can be viewed on the State GST Portal which has been illegally withheld by the Respondents from September, 2019 onwards, thus, doubly penalizing the petitioner i.e., on one hand, the petitioner is regularly depositing the GST amount as a statutory requirement and on other hand, the Respondent is withholding on ad-hoc basis the GST from Petitioner's tax invoice.

(d) For issuance of an appropriate writ, order or direction, holding and

declaring that the Petitioner is entitled for reimbursement of GST due to the fact that Respondent have deposited TDS on CGST and SGST @ 1% each of gross value of GST invoice from the date of applicability i.e. from 01/09/2018.

(e) For issuance of any other appropriate writ(s)/ order(s)/ direction(s) as Your Lordships may deem just and proper in the facts and circumstances of the case for imparting substantial justice to the Petitioner.

6. This is admitted at the Bar that these writ petitions are based on similar facts and the only difference that can be pointed out is with respect to the date of the Letter of Award and the execution of the Agreement with the Jharkhand Bijli Vitran Nigam (in short, JBVNL). The facts in brief are that for the rural electrification under the Dindayal Upadhyay Gram Jyoti Yojna (in short, DDUGJY), the bids were invited by the JBVNL on different dates and the petitioner-Firms were selected for the implementation of the scheme. As per clause 10.7 and clause 31 of the GCC, any increase in the price of the indirect transactions on account of a change in the tax regime was to be borne by the Contractor as the price quoted thereon was inclusive of the taxes. The direct transactions are confined to the purchase of materials by the JBVNL directly from the petitioner-Firms whereunder the price quoted is exclusive of taxes. The other transactions labeled as indirect transactions included the bought-out items and the materials procured by the petitioner-Firms from the other vendors and sold to the JBVNL. As the transactions involved in the implementation of the rural electrification works fell under the definition of "supply" as defined under section 7(1) of the GST Act, the concerns about the differentiation made between the direct and indirect transactions were raised from time to time. The REC issued a circular on 30th June 2016 which clarified that the impact of the GST upon the contract shall be considered in totality. On the same lines, the REC issued another circular on 19th June 2018 making further clarification as to the impact of the GST on indirect and bought-out

transactions. This is common ground that a pre-bid clarification meeting was held and clause 10.7 of the GCC was amended and that was incorporated in the LOAs through clause 28 therein. The stand taken by the State of Jharkhand is that notwithstanding the amendment in clause 10.7 the provision under clause 31 of the GCC shall apply and the Contractor cannot claim reimbursement of the GST impact on the procurement of raw materials, intermediary components etc., and the bought-out items.

7. The main plank of the petitioner-Firms is the judgment rendered in W.P.(T) No. 4885 of 2022 and analogous cases filed by M/s. Techno Electric and Engineering Company Limited wherein a co-ordinate Bench of this Court held that the action of the respondent-JBVNL offends the equality clause under Article 14 of the Constitution of India inasmuch as a refusal to reimburse the Contractor the GST impact on indirect transactions shall breach the rule of promissory estoppel and be against the doctrine of legitimate expectation. The writ Court further held that the JBVNL which continued to pay the GST impact on the affected transactions in totality and adhered to the amended clause 10.7 of the GCC till August 2019 could not have stopped the reimbursement and started recovering the payments so made to the Contractors on a specious ground that it was a provisional arrangement for the GST reimbursement. The writ Court further held that there is no ambiguity or conflict between the contract documents and the effect of the amendment in clause 10.7 of the GCC cannot be taken away on the ground that clause 31 reflects a different intention. Referring to section 64-A of the Sale of Goods Act, 1930, the writ Court held that the respondents are under an obligation to pay the taxes, duty and levies in the event of any change in the law and the Contractor has a

right to add such additional amount of tax to the contract price and recover the GST impact from the respondents.

8. The judgment in “*M/s Techno Electric and Engineering Company Limited*”¹ was challenged by the State of Jharkhand in the Special Leave Petition (Civil) Diary No(s). 35251 of 2023 and that was dismissed observing as under:

“Delay condoned.

Having heard the learned senior counsel for the petitioners as also the learned senior counsel for the respondents, keeping in view the factual aspects involved in the instant case, we see no reason to interfere.

However, on the larger issue relating to the question of law which has been raised, the same is left open to be considered if it arises in an appropriate fact situation.

Petition(s) stand(s) disposed of along with the pending application(s), if any.”

9. Mr. Ajit Kumar Sinha, the learned senior counsel appearing for the East India Udyog Limited submits that the order passed by a co-ordinate Bench of this Court in M/s Techno Electric and Engineering Company Limited was affirmed by the Hon’ble Supreme Court after an adjudication on facts and while so the findings recorded in the said case cannot be re-opened in the present proceeding. According to the learned senior counsel, this batch of the writ petitions involves identical set of facts and issues and therefore the judgment of the co-ordinate Bench in M/s Techno Electric and Engineering Company Limited shall be binding on this Bench. The learned senior counsel invites our attention to “*Mary Pushpam*”² to fortify his submission that a judgment rendered on facts cannot be reopened and deviated from by another co-ordinate Bench of the Court. The learned senior counsel also referred to “*Official Liquidator*”³ to submit that there is not even a bit of any tangible

¹ M/s Techno Electric and Engineering Company Limited : W.P(T) No.4885 of 2022

² Mary Pushpam v. Telvi Curusumary : (2024) 3 SCC 224

³ Official Liquidator v. Dayanand & Ors. : (2008) 10 SCC 1

reason to deviate from the findings recorded by the co-ordinate Bench.

10. On the other hand, the learned Advocate General submits that the interpretation of amended clause 10.7 of the GCC by the co-ordinate Bench in W.P.(T) No. 4885 of 2022 and analogous cases does not take note of the impact of clause 31 of the GCC and therefore the said judgment requires reconsideration by this Court. According to him, the amended clause 10.7 of the GCC makes provision for an equitable adjustment of the contract price on account of any change by addition to the contract price or deduction therefrom, as provided under “GCC clause 31”. The learned Advocate General further submitted that the question of law involved in this batch of writ petitions is whether the petitioner-Firms are entitled for the reimbursement of the GST paid by them on the indirect transactions even though clause 31 specifically bars such claims by the Contractor, and this larger question has been left open by the Hon’ble Supreme Court to be decided in an appropriate case. The argument in the alternative is that this Court may make a reference to the larger Bench for deciding the question of law as indicated in the order passed by the Hon’ble Supreme Court.

11. We shall first examine clause 31 of the GCC which is reproduced hereunder:

“31.1 If, after the date seven (07) days prior to the date of Bid Opening, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components etc. by the Contractor for which the Employer shall be the sole judge. Notwithstanding the foregoing, such additional or reduced costs shall not

be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix-2 to the Contract Agreement. "

12. Clause 31 of the GCC provides that the adjustments on account of any law, regulation, ordinance order or by-law having been enacted seven days before the bid opening date, or abrogated, or changed that subsequently affects the cost and expenses of the contract and/or the time for completion, shall be restricted to direct transactions between the Employer and the Contractor. In converse, clause 31 bars any adjustment to the Contractor on the procurement of raw materials, intermediary components etc. The unamended clause 10.7 of the GCC also referred to the increase or decrease in tax or introduction of a new tax, or the abolition of an existing tax in the course of the performance of the contract. It provided that an equitable adjustment for the contract price shall be made fully taking into account any such fact by addition to contract price or deduction therefrom in accordance with clause 31 of the GCC.

13. To have a better understanding of the rival stands regarding the adjustments towards payment of the GST component on the indirect transactions, it is necessary to have a look at clause 10.7 of the GCC prior to its amendment.

Original clause 10.7 of the GCC

"For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission hereinafter called "Tax" in this GCC Sub-clause 10.7). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 31 (Changes in Laws and Regulations) hereof. In the event of introduction of GST in the course of performance of contract,

PIA shall examine its impact on the affected transactions under the contract in totality, for equitable adjustment in the contract price, if required. The contractor shall furnish the relevant details/documents for this purpose, as may be required by PIA. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor for which the taxes and duties are reimbursable by the Employer as per the Contract. These adjustments shall not be applicable on procurement of raw materials, intermediary components etc by the Contractor and also not applicable on the bought out items dispatched directly from sub-vendor's works to site.

In respect of raw materials, intermediary components etc and bought out items, neither the Employer nor the Contractor shall be entitled to any claim arising due to increase or decrease in the rate of Tax, introduction of a new Tax or abolition of an existing Tax in the course of the performance of the Contract.”

14. The unamended clause 10.7 of the GCC contemplated the introduction of GST in the course of performance of the contract and therefore it was provided in clause 10.7 that in the event of introduction of GST in the course of performance of the contract, PIA shall examine its impact on the affected transactions under the contract in totality for equitable adjustment in the contract price, if required. Before the amendment, clause 10.7 was in sync with clause 31 and both provided that the adjustment on account of the introduction of GST in the course of performance of the contract was restricted to direct transactions between the Employer and the Contractor for which the taxes and duties were reimbursable by the Employer. This is plain reading that what is provided under clause 31 of the GCC was also incorporated under clause 10.7 which contained a restrictive covenant to the effect that the adjustments to be made on account of change in the existing tax structure shall not be applicable to the procurement of raw materials, intermediary components etc. by the Contractor and shall also not be applicable on the bought-out items dispatched directly from the sub-vendors to the work site.

15. The Employer was so cautious that it was further provided under clause 10.7 that neither the Employer nor the

Contractor shall be entitled to any claim arising due to increase or decrease in the rate of tax in respect of raw materials, intermediary components etc. and bought-out items. Similarly, clause 31 of the GCC also provided that the adjustment in the contract price on account of any change in law shall be restricted to the direct transactions between the Employer and the Contractor, and shall not be available on procurement of raw-materials, intermediary components etc. by the Contractor. It is thus quite apparent that a similar restriction as provided in clause 31 that the adjustment in the contract price shall be restricted to direct transactions between the Employer and the Contractor was incorporated in the latter part of the unamended clause 10.7 to emphasize the intention of the Employer not to allow any adjustment on procurement of raw-materials, intermediary components etc. Later, the negative covenants in clause 10.7 starting from "however, this adjustment would be restricted to direct transaction....." were deleted. Now the amended clause 10.7 provides that in the event of introduction of GST in the course of the performance of the contract, the PIA shall examine its impact on the affected transaction under the contract in totality for equitable adjustment in the contract price, if required.

16. The amended clause 10.7 of the GCC reads as under:

"For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called "Tax" in this GCC Sub-clause 10.7). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 31 (Changes in Laws and Regulations) hereof. In the event of introduction of GST in the course of performance of contract,

PIA shall examine its impact on the affected transactions under the contract in totality, for equitable adjustment in the contract price, if required. The contractor shall furnish the relevant details/documents for this purpose, as may be required by PIA.”

17. However, the learned Advocate General contends that as regards adjustments in the contract price clause 31 of the GCC shall guide and regulate the provision under clause 10.7 even after the amendment thereto. The rule *ex antecedentibus et consequentibus fit optima interpretation* which means the deed must be read as a whole in order to ascertain its true meaning is of vintage origin. In “*Throcmerton*”⁴ the Court observed that the contract as a whole has to be considered. More than a century thereafter, Lord Watson⁵ said “I find nothing in this case to oust the application of the well-known rule that a deed ought to be read as a whole to ascertain the true meaning of its several clauses and that the words of each clause should be so interpreted as to bring them in harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible”. Aptly said Lord Diplock⁶ ;

“... if detailed semantic and Syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense.”

18. In our opinion, the amendment in clause 10.7 of the GCC would completely obliterate the impact of clause 31. The introduction of clause 28 in the Agreement after the decision in pre-bid meeting to delete the negative covenants in clause 10.7 under which any reimbursement on indirect transaction was barred supports this interpretation. The mere presence of clause 31 in the amended clause 10.7 of the GCC shall not take away the effect of the amendment so

⁴ Throcmerton v. Trucey : (1585) 1 Plow. 145, 161

⁵ Chamber Coillary v. Twyerould (1893) : [1915] 1 Ch. 268n., 272

⁶ Antaios Compania Naviera S.A. v. Salen Rederierna : A.B 1985 AC 191

carried out after the pre-bid meetings. Had the parties intended to restrict the adjustment in the contract price only to the direct transaction between the Employer and the Contractor there was no need for any amendment as the provision as to reimbursement only for the direct transactions was already incorporated in the unamended clause 10.7. Since the parties agreed for adjustment on procurement of raw materials etc., the restrictive stipulations in clause 10.7 were deleted and now the benefit intended to be extended to the Contractors under the amended clause 10.7 of the GCC cannot be taken away by virtue of clause 31. If the effect of clause 31 has to be read in clause 10.7 that shall be doing violence to the intention of the parties and therefore the part of clause 10.7 which retains clause 31 and materially affects the amended clause 10.7 has to be ignored. Mr. M.S. Mittal, the learned senior counsel referred to the observation of Lord Hoffmann in "*Investors Compensation Scheme Ltd.*"⁷ wherein the learned Law Lord rendered an opinion that interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge. The interplay between clause 31 and the amended clause 10.7 of the GCC is a question of interpretation of the contract and, we do not see any reason to differ with the reasoning of the co-ordinate Bench as to the effect of clause 31 in the amended clause 10.7 of the GCC. In "*McDermott International*"⁸ the Hon'ble Supreme Court held that the terms of the contract can be expressed or implied and the conduct of the parties would also be a relevant factor in the matter of construction of a contract. After the amendment in clause 10.7, the JBVNL started paying the GST impact on whole of the contract including the indirect

⁷ Investors Compensation Scheme Ltd. V. West Bromwich Building Society : (1998) 1 All ER 98 (HL)
⁸ McDermott International v. Burn Standard Co. Ltd. : (2006) 11 SCC 181

transactions and that demonstrates its correct understanding of the effect of the amendment in clause 10.7 but without any plausible and acceptable reason it had stopped/withdrawn the GST impact on the indirect transactions; a change in the political regime or the bureaucracy should not bring a change in the understanding in law.

19. Still, the learned Advocate General endeavored to support his submission with reference to the letters dated 30th June 2016 and 5th June 2018 from the REC to the Project Implementing Agency, that clause 31 which was not omitted from clause 10.7 shall restrict the entitlement of the Contractors for reimbursement of the GST impact only towards the direct transactions.

20. **The letter from the REC dated 30th June 2016 reads as under:**

No. REC/DDUGJY/SBD/16-17/686

Date: 30.06.2016

To,
All Project Implementing Agencies
RE-DDUGJY Projects

Subject: Clarifications on Statutory Tax Variations on introduction of GST.

Madam/Sir,

This has reference to WBSEDCL e-mail dated 21.06.2016 received from ED distribution seeking clarification on the query raised by M/s L&T, regarding admissibility of statutory variation in Taxes in the event of Introduction of proposed GST. As per SBD for Partial Turnkey Contracts, Clause 10.7 of General Conditions of Contract (GCC) under heading Taxes & Duties is reproduced as hereunder:

"For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2(Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called "Tax" in this GCC Sub-clause 10.7). If any rates of Tax are Increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 31 (Changes in Laws and Regulations) hereof.

However, these adjustments would be restricted to direct transactions between the Employer and the Contractor for which the taxes and duties are reimbursable by the Employer as per the Contract. These adjustments shall not be applicable on procurement of raw materials, intermediary components etc by the Contractor and also not applicable on the bought out items dispatched directly from sub-vendor's works to site”.

Moreover the clause 31, of GCC of SBD under heading changes in Laws and Regulations is stated as hereunder:

If, after the date seven (07) days prior to the date of Bid Opening, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components etc. by the Contractor for which the Employer shall be the sole Judge. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix-2 to the Contract Agreement.

In this connection, it is clarified that “in the event of introduction of GST in the course of performance of contract, PIA shall examine its impact on the affected transactions under the contract in totality for equitable adjustment in the contract price, if required. The contractor shall furnish the relevant details/documents for this purpose, as may be required by PIA”.

This is for kind information and necessary action please.

Thanking You,

Yours Sincerely,

Sd/-

(G S BHATI)

General Manager

(DDUGJY)

21. The letter from the REC dated 5th June 2018 is reproduced, as under:

No.REC/DDUGJY/Jharkhand/Chatra/2018-19/71/6144 Dated: 05.06.2018

The Managing Director,
Jharkhand Bijali Vitran Nigam Limited,
Engineering Building, HEC,
Dhurwa, Ranchi-834004

Sub : Regarding clear guidelines/directions related to payment terms and impact of GST on ongoing work of Village Electrification under 12 Plan

DDUGJY (erstwhile RGGVY) projects.

Ref: Letter No. CE/RE/383/14-15/2279/RE dated 11.04.2018 and CE/RE/383/14-15/2911/RE dated 14.05.2018 dated from Chief Engineer (RE), JBVNL.

Sir,

This has reference to JBVNL letters referred above regarding the captioned subject. In this regard, your kind attention is drawn to the relevant stipulations in the contract conditions which are reproduced below

C1. 10.7 Taxes and Duties

Quote

For the purpose of the contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called "Tax" in this GCC sub-clause 10.7). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 31 (Changes in Laws and Regulations) hereof. However these adjustments would be restricted to direct transactions between the Employer and the Contractor for which the taxes and duties are reimbursable by the Employer as per the Contract. These adjustments shall not be applicable on procurement of raw materials, intermediary components etc by the Contractor and also not applicable on the bought out items dispatched directly from sub vendor's works to site.

In respect of raw materials, intermediary components etc. and bought out items, neither the Employer nor the Contractor shall be entitled to any claim arising due to increase or decrease in the rate of Tax introduction of a new Tax or abolition of an existing Tax in the course of the performance of the Contract.

Unquote

Clause No. 31.1 of 31 (change in laws and Regulations)

Quote

If, after the date seven (07) days prior to the date of Bid opening any law regulation, Ordinance, Order or by-law having the force of law is enacted promulgated, atrogated or changed in India (which shall be deemed to include any change in interpretation of application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased and/or the Time for completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between

the Employer and Contractor and not on procurement of raw materials, intermediary components etc. by the Contractor for which the Employer shall be the sole judge. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix 2 to the Contract Agreement

Unquote

2. In the REC letter dated 30.06.16 the aforesaid stipulations were only reiterated further clarifying that in the event of introduction of GST in the course of performance of contract, PIA shall examined its impact on the effected transactions under the contract in totality, for equitable adjustment in the contract price, if required and that the contractor shall furnish the relevant details/documents for this purpose, as may be required by the PIA.

3. Perusal of the above stipulations/documents do not reveal any sort of contradiction amongst them. In fact, both the clauses are seen supporting and complementing each other which have been just reiterated in the RECs letter. The word “totality” used in the REC letter refers to the impact of introduction of GST, which might have been misunderstood as GST on contract in totality. However, it is worthwhile to add that under GST (and profiteering clause), the contractor is also bound to pass on the benefit of tax efficiencies arising on account of reduction in tax rates or increased eligibility of input tax credit. This aspect may also be considered while accounting the impact of GST, in accordance with the contract conditions.

Thanking you,

Yours sincerely

Sd/-

(Dr. P. Shakil Ahammed, IAS)
Sr. Executive Director (PMD)

22. The clarification issued by the REC through the letter dated 30th June 2016 reiterated that “in the event of the introduction of GST in the course of performance of the contract, PIA shall examine its impact on the affected transactions under the contract in totality for equitable adjustment in the contract price, if required”. In its letter dated 5th June 2018, the REC again reiterated that in the event of the introduction of GST in the course of performance of the contract, the PIA shall examine its impact on the affected transaction under the contract in totality for equitable adjustment in the contract price, if required. Quite evidently, the word “totality” used in these letters referred to the impact of the introduction of GST on the entire contract.

23. Simply put, the effect of deletion of the latter portion in clause 10.7 of the GCC shall be that the adjustment of GST component shall no longer be restricted to direct transactions between the Employer and the Contractor. The writ Court rightly held that clause 31 of the GCC cannot be read in a manner so as to obliterate the impact of the amended clause 10.7 of the GCC. Now having thus interpreted the different clauses under the GST, we say with certainty that the entitlement of the petitioner-Firms to claim the increase in the tax liability on the indirect transactions that underwent change in the course of the working of the contract is an enforceable right under section 64-A of the Sale of Goods Act, which can be denied only in the case of a contract to the contrary.

24. In “*M/s Techno Electric and Engineering Company Limited*”, this Court held as under:

“11. From the Pre-bid Clarification dated 06-09-2016 and the Clause 28 of Letter of Award dated 09-06-2017 the intentions of the parties are clear that in the event of introduction of GST in the course of performance of contract, PIA shall examine its impact on the affected transactions under the contract in totality for equitable adjustment in the contract price, if required. It further transpires that the pre- bid negation and Para 28 of LOA explains the scope of Clause 31.

It is fairly well settled that a contract should be read as a whole and so far, as possible as mutually explanatory as held by the Hon’ble Apex Court in the case of South East Asia Marine Engineer Construction Ltd. Vs. OIL India Ltd. reported in (2020) 5 SCC 164.

In the case of Indian Oil Corporation Ltd. Vs. FEPL Engineering P. Ltd. reported in (2019) (6) Arb LR 155 (Delhi) (DB) it is held by the Delhi High Court that the explicit terms of the contract are always the final words with regard to the intention of parties and multiclass contract has to be understood and interpreted in a manner that any view as a particular clause of the contract should not do violence to another part of the contract.

In the case of Oil & Natural Gas Corp Vs Saw Pipes Ltd repotted in (2003) 5 SCC 705 it is held by the Hon’ble Supreme Court that it is settled law that the intentions of the parties is to be gathered from the words used in the agreement. When the terms of the contract are clear and unambiguous then its meaning is to be gathered only from the words used therein. In a case where agreement is executed by the expert in the field it cannot be held that the intention of the parties was different from the language used therein.

12. It is further apparent that the contract in the instant case is supply contract, are for sale of goods, hence, in any case, in terms of Section 64 A of the Sale of Goods Act, 1930 the petitioner is entitled to GST impact on the indirect transactions. Section 64A, Sale of Goods Act, makes it clear that the respondents are under obligation to pay the taxes, duties and levies in the event of change in law and the seller (in the present case, the Petitioner) has a right to add such additional amount of tax to the contract price. In terms of Section 64A(2)(b) of Sale of Goods Act, the Petitioner, is entitled to recover from the respondents the tax withheld on account of imposition of GST.

Thus, the actions of the respondent No.2 violates principles of promissory estoppels and contrary to the doctrine of legitimate expectations of the petitioner and hence, offends Article 14 of the Constitution of India. The petitioners having shifted their position in view of the pre-bid meeting and clarification, now at this stage, the licensee cannot take a U-Turn by not paying the GST impact.

At this stage it is relevant to observe that as per the agreed terms, after introduction of GST, the Respondent No.2 started paying /reimbursing amounts of GST impact on “affected transactions in totality” i.e., direct transactions between Employer and Contractor as well as indirect transactions (bought out items) which continued up to August, 2019, up till execution of 80% of the work. However, all of a sudden, without even informing the petitioner, withheld amount of GST impact while paying bills from the month of September, 2019 and also started recovering the same. As a matter of fact, the Respondent No.2 never informed Petitioner till date the reasons for withholding of GST amount or that they are releasing GST payment as indirect transactions/bought out item provisionally.

13. The contention of the Respondent No. 2 that the GST was reimbursed as indirect transaction provisionally is extraneous and does not bear out from the agreed terms but the Respondent No.2 remained silent. In the case of Mahabir Auto Stores Vs Indian Oil Corporation reported in (1990) 3 SCC 752 it is held by the Hon’ble Apex Court that State or its instruments entering any commercial transaction under Article 298 of the Constitution of India, are “State” under Article 12 and its actions must be reasonable, fair and just even when no “formal contract” has been entered into between the parties and it should inform and take into confidence the affected party when any adverse action is contemplated.

Similar view was taken in the case of Security Printing Mining Corp. of India Ltd. Vs. Gandhi Industrial Corp. reported in (2007) 217 ELT 489 (SC) wherein it is held by the Hon’ble Supreme Court that principles of sub-silentio not applicable when terms and condition are well known and clearly understood between parties.

Further, in the case of Sime Darby Engineering SONBHD Vs. Engineers India Ltd. reported in (2009) 7 SCC 545 it is held by the Hon’ble Supreme Court that any policy/decision cannot change the contractual clause.

14. There is no conflict between different clauses of the contract as accepted by the respondent no.2 [under para 10(i) of counter affidavit] hence, the “order of precedence” under clause 1.2 of contract agreement (Annexure 9) is not attracted. The Article 1.2 of the Contract Agreement

dated 19-06-2017 provides the “Order of Precedence (Reference to GCC Clause 2)” which reads as follows;

Article 1. Contract Documents

1.1 Contract Documents(Reference GCC Clause 2.2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract.

Volume – A

1. The Contract Agreement and the Appendices thereto.
2. Invitation to bids. NIT No.110/PR/JBVNL/16-17
3. Pre-Bid Clarification dated 09-06-2016
4. Letter of Intent No.990/RE dated 09-05-2017
5.
6.
7. Letter of Award, LOA No.60/RE dated 09-06-2017

1.2 “Order of Precedence (Reference to GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents list above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1(Contract Documents) above.

In the instant case there is no ambiguity or conflict between the contract documents, hence, the order of precedence under Article 1.2 would not apply. The Respondent No.2 under Para 10(i) of the Counter Affidavit has accepted that stipulations/documents do not reveal any sort of contradiction amongst them. In fact, both the clauses are seen supporting and complementing each other, which have been just reiterated in the REC'S Letter dated 30-06-2016.

15. With regard to the contention of the Respondents on the question of maintainability; now it is well settled that the writ in contractual matters against public authority or instrumentality or agencies of state are ‘State’ within the meaning of Article-12 of the Constitution of India and hence are maintainable. Now the law is no more res integra, even in contractual matters the writs would maintainable against the Government or instrumentality or agencies of the Government. Even in cases of money claim writ against State within the meaning of Article 12 of the Constitution of India would be maintainable. In the case at hand, the acts and actions of the Respondents are in derogation to the Article 14, 19(1)(g), 21 and 300A of the Constitution of India.

In the case of UOI Vs. Tantia Construction Pvt. Ltd reported in (2011) 5 SCC 697 it is held by the Hon’ble Supreme Court that writ in contractual matters would be maintainable even if there is an arbitration clause as alternative remedy is not a bar. Recently, the Hon’ble Apex Court in the case of Popatrao Vyankatrao Patil v. State of Maharashtra, reported in (2020) 19 SCC 241, held that the High Court would be justified in exercising its jurisdiction under Article 226 to the exclusion of other available remedies when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India.

In the well celebrated judgment, the Supreme Court in the case of ABL International Ltd. v. Export Credit Guarantee Corp. of India Ltd., reported in (2004) 3 SCC 553, at Para 23, has held that, once the State or

an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if an instrumentality of the State has acted in contravention of Article 14, then a writ court can issue suitable directions to set right the arbitrary actions and even can grant money claim. Similar views have been expressed in the case of Unitech Limited Vs Telengana State Industrial Infrastructure Corporation (TSIIC) reported in 2011 SCC Online SC 99 (Para 38 to 41).

As a matter of fact, this issue has been settled way back in the case of Kumari Shrilekha Vidyurthi Vs. State of Uttar Pradesh reported in (1991) 1 SCC 212, wherein it is held by the Hon'ble Apex Court that States Constitutional obligation co-exists with contractual obligation and State action is amenable to judicial review to determine violation of Article 14 irrespective of where it is in contractual sphere or other sphere. The action of judicial review should be based not on the nature of function i.e., contractual or otherwise but public nature of the body exercising that function, State action being public in nature is open to judicial review even, if it pertains to contractual field. The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of States activity. To the extent the challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary unfair or unreasonable, the fact that the dispute also falls within the domain contractual obligation, would not relieve the State of its obligation to comply with the basic requirement of Article 14. An additional contractual obligation cannot direct the claimant of the guarantee under Article 14 of the non-arbitrariness at the hands of the State in any of its action. Every State action in order to survive, must be susceptible to the vice of arbitrariness which is crux of Article 14 and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of rule of law. Satisfaction of test of non-arbitrariness in every State action is sine qua non to its validity and in this respect the State cannot claim comparison of with private individual even in the field of contract Arbitrariness is anathema to State action in every sphere and wherever the vice percolates, the Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. Every State action must be informed by reasons and it follows that an out uninformed by reason, is arbitrary. The same view was reiterated by the Hon'ble Apex Court in the case of Food Corporation of India vs Kamdhenu Cattle Feed Industries, reported in (1993) 1 SCC 71.

Recently, in the case of Papatrao Vyankatrao Patil Vs. The State of Maharashtra reported in (2020) SCC Online SC 291 it is held by the Hon'ble Supreme Court that State and its instrumentality should act as a model litigant and should not put forth false, frivolous, vexatious, technical (unjust) contention to obstruct patch of justice and by taking technical plea for the purpose of defeating legitimate claim of citizen and should do what is fair and just for the citizen. 16. In view of the aforesaid discussion and the settled proposition of law we are of the considered opinion that the respondents were not justified in withholding the amount of GST impact and the same is arbitrary, violative and against their own terms of agreement. Consequently, we hold that in view of introduction

of GST during the continuance of the ongoing contract, the liability to pay GST shall be that of the Respondent JBVNL in terms of the amended work order incorporating the impact of GST.

Hence, the matter is remitted back to the Respondent JBVNL to calculate and pay the withheld amount which has been deducted from various bills of the petitioner since September, 2019 till the date of actual payment as the petitioner is entitled for reimbursement of GST along with statutory interest in terms of the GST Act, 2017 read with the Rules framed thereunder.

It is made clear that the entire exercise shall be completed within a period of 12 weeks from the date of receipt/production of copy of this order.

17. Accordingly, these writ applications stand disposed of. Pending I.As., if any, are also disposed of.”

25. Now coming to the doctrine of merger, it is contended that on setting aside of the order passed by the High Court it shall be the decision of the Hon’ble Supreme Court which shall be the operative order governing the rights and liabilities of the parties to the contract. When a Special Leave Petition is dismissed in limine the order passed by the High Court does not merge with the dismissal order passed by the Hon’ble Supreme Court. This seems to be the reason that even after the dismissal of the Special Leave Petition in limine the aggrieved party can move a petition for review of the order/judgment of the High Court. As indicated in “*Kunhayammed*”⁹, the Special Leave Petition filed by the State of Jharkhand was dismissed without ‘leave’ being granted by the Hon’ble Supreme Court and the challenge laid to the judgment in M/s. Techno Electric and Engineering Company Limited was dismissed in limine. However, what is contended on behalf of the petitioner-Firms is that in the identical set of facts there cannot be more than one decision governing the same subject-matter.

26. Aristotle said that the habit of lightly changing the laws is evil. Recently, Scarman, L.J. observed that: “Consistency is

⁹ *Kunhayammed v. State of Kerala* : (2000) 6 SCC 359

necessary to certainty – one of the great objectives of law”¹⁰. Indeed, this is necessary to maintain discipline in the judicial system that a co-ordinate Bench follows the decision of another co-ordinate Bench. In “*Mahadeolal Kanodia*”¹¹ the Hon’ble Supreme Court stressing the need for instilling certainty in the judicial system observed that if the judges of co-ordinate jurisdiction in a High Court start over-ruling one another’s decisions the certainty in the system shall disappear. Shortly thereafter, in “*Lala Shri Bhagwan*”¹², the Hon’ble Supreme Court observed that if the learned Judge thinks that the earlier decision of the Court requires reconsideration, he should not embark upon that inquiry but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. The exposition of law on the judicial discipline and proprietary in “*Kalika Kuer*”¹³ wherein the Hon’ble Supreme Court held that the earlier judgment by a co-ordinate Bench cannot be ignored by invoking the principle of *per incuriam* seems to put this debate at rest forever. In “*Kalika Kuer*”¹³, the Hon’ble Supreme Court held as under:

“10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of Ramkrit Singh was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh the Court did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct

¹⁰ Tiverton Estates Ltd. v. Wearwell Ltd. : (1975) Ch 146

¹¹ *Mahadeolal Kanodia v. Administrator-General of W.B.* : AIR 1960 SC 936

¹² *Lala Shri Bhagwan v. Ram Chand* : AIR 1965 SC 1767

¹³ *State of Bihar v. Kalika Kuer* : (2003) 5 SCC 448

yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.”

27. Next, the learned Advocate General endeavored to classify the writ petitions in two categories; one set of writ petitions pertains to the N.I.T. floated in the year 2015 where amended clause 10.7 of the GCC was not incorporated in the Agreement. The stand of the JBVNL is that such petitioner-Firms cannot claim reimbursement of GST component over procurement of raw materials, intermediary components and bought-out items. According to the JBVNL, there is a set of seven writ petitions vide W.P (T) Nos.5720 of 2023, 5721 of 2023 and W.P(T) No.5722 of 2023 (filed by M/s Anvil Cables Private Limited); W.P(T) Nos.6712 of 2023, 7060 of 2023 and W.P(T) No.7066 of 2023 (filed by Sri Gopikrishna Infrastructure Private Limited) and; W.P(T) Nos. 160 of 2024 filed by East India Udyog Limited where the unamended clause 10.7 of the GCC shall apply.

28. M/s Anvil Cables Private Limited was given the Letter of Award on 5th February 2016 and 5th June 2016 for the districts of Giridih, Bokaro and Dhanbad. Similarly, Sri Gopikrishna Infrastructure Private Limited was awarded the contract for the districts of Koderma and Bokaro and issued LOA on 9th March 2016 for the district of Koderma and LOAs both dated 16th August 2016 for the district of Bokaro and for the district of Deoghar the LOA was issued on 14th February 2016. W.P(T) No.160 of 2024 filed by the East India Udyog Limited pertains to the NIT No.487/PR/JBVNL/15-16 pursuant to which the East India Udyog Limited was given LOA dated 13th December 2015 for the district of Singhbhum.

29. Mr. M. S. Mittal, the learned senior counsel appearing for

M/s Anvil Cables Private Limited referred to the circulars dated 18th September 2018 and 27th April 2021 to reinforce his submission that the clear intention behind amendment in clause 10.7 of the GCC was that the GST paid by the Contractor on indirect transactions shall be reimbursed. The learned senior counsel further submitted that the JBVNL is bound by the change in clause 10.7 of the GCC and it cannot adopt a pick-and-choose method to deny the benefit to one set of petitioner-Firms which was awarded contract pre-GST regime. Supporting him, Mr. Ajit Kumar, the learned senior counsel appearing for M/s Sri Gopikrishna Infrastructure Private Limited referred to the decisions of the High Court of Karnataka in “*Chandra Se Kariya & Ors.*”¹⁴; the Patna High Court in “*Jai Bhawani Construction*”¹⁵ and; “*M/s Sai Sai Krishna Constructions*”¹⁶ of this Court to submit that the judgment in “*M/s Techno Electric and Engineering Company Limited*” confirms to the judicial opinion across the other High Courts that the GST component paid by the Contractor on indirect transactions is reimbursable to the Contractor. Mr. Rohitashya Roy, the learned counsel who appears for M/s NCC Limited adopted the arguments advanced by the learned senior counsels appearing for the other petitioner-Firms.

30. This is a settled law that the State and its instrumentalities are required to demonstrate fair play in action. In “*ABL International Ltd. and Another*”¹⁷ the Hon’ble Supreme Court observed that even in contractual matters, the State and its instrumentalities are required to follow the equality clause under Article 14 of the Constitution of

¹⁴ *Chandra Se Kariya & Ors. v. State of Karnataka & Ors.* : 2023 SCC OnLine Kar 143

¹⁵ *Jai Bhawani Construction through its Authorized Signatory v. Union of India & Ors.*: 2019 SCC OnLine Pat 1261

¹⁶ *M/s Sai Sai Krishna Constructions v. State of Jharkhand* : W.P(T) No.2108 of 2019

¹⁷ *ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others* : (2004) 3 SCC 553

India. The petitioner-Firms were agitating for their right to refund/reimbursement for long. They have brought on record the copies of their representations made to the JBVNL, and the response thereto by the JBVNL was that the matter is pending litigation. On the point of similarity of facts with M/s Techno Electric and Engineering Company Limited, suffice it would be to record that the NITs, GCCs, LOAs, and the GST clause introduced in the LOAs are the same. A pre-bid clarification letter dated 30th June 2016 was issued to all the Implementing Agencies for clarification on the statutory tax valuations upon the introduction of the GST. Now only because the NITs were floated on different dates or the LOAs or the Agreements were executed pre-GST regime, the benefit of GST reimbursement on indirect transactions under the amended clause 10.7 of the GST cannot be denied to such petitioner-Firms. The stand taken by the JBVNL that the pre-bid clarification which resulted in amendment in clause 10.7 and subsequent incorporation of clause 28 in the GCC shall not be available to the petitioner-Firms violates the basic norm of justice, equity and fair play. It is not disputed that the nature of the work awarded to the petitioner-Firms in both phases is the same and the execution of the work under the previous contracts was in progress when the amendment in clause 10.7 of the GCC was made. We think that no distinction can be drawn on the basis of the date of execution of the Agreement and the benefit of the amended clause 10.7 of the GCC cannot be denied to the petitioner-Firms if the GST regime was brought into force in the course of the performance of the contract. We therefore hold that the petitioner-Firms referred to in paragraph no.27 and other similarly situated Contractors are entitled to reimbursement of the GST impact also on the indirect transactions on which the GST was imposed.

31. In the result, the writ petitions are allowed to the extent that the JBVNL shall calculate and reimburse the petitioner-Firms the GST component paid by them and it shall release the withheld amount from the bills of the petitioner-Firms, if any. As held by co-ordinate Bench, the petitioner-Firms are entitled for reimbursement of the GST along with statutory interest in terms of the GST Act, 2017 read with the Rules framed thereunder. The entire exercise shall be completed as early as possible and not beyond six weeks. As the delay shall incur further liability towards statutory interest, the responsibility shall be fixed and recovery may be ordered from the erring authority.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

A.Mohanty/ A.F.R