

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.22818 OF 2024

Between:

M/s. R.V.R.Sai Pranav

... **Petitioner**

And

The Singareni Collieries Company Limited, & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 25.11.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.22818 OF 2024****% 25.11.2024****Between:**

M/s. R.V.R.Sai Pranav

... Petitioner**And**\$ **The Singareni Collieries Company Limited**, & others**... Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioners

: Sri O.Manohar Reddy, learned senior designated counsel representing Sri Laxmikanth Reddy Desai, learned counsel appearing on behalf of the petitioner on record

^ Counsel for Respondents

:Sri E.Madan Mohan Rao, learned senior designated counsel representing Sri P.Sri Harsha Reddy,learned standing counsel for SCCL for respondents

? Cases Referred:

i) (2021) 6 SCC 771

ii) (1998) 8 SCC 1

iii) (2021) SCC Online SC page 801

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.P. No.22818 OF 2024

ORDER:

Heard Sri O.Manohar Reddy, learned senior designated counsel representing Sri Laxmikanth Reddy Desai, learned counsel appearing on behalf of the petitioner on record and Sri E.Madan Mohan Rao, learned senior designated counsel representing Sri P.Sri Harsha Reddy, learned standing counsel for SCCL appearing on behalf of the respondents on record.

2. **The Petitioner approached the Court seeking prayer as under :**

"...pleaded to issue a writ order or a direction more particularly one in the nature of a writ of Mandamus declaring the action of the Respondents in reducing the 3D Scanner Data quantity recorded and executed by the Petitioner in the monthly bills and making payment of bill amounts on reduced quantity without there being any justification and right under the contract as unconscionable illegal, arbitrary, unfair, unreasonable unconstitutional and in violation of principles of natural justice and the express terms of the order dated 19 09.2020 and consequently to direct the Respondents to revise the monthly bills as per the 3D Laser Scanner Data surveyed

quantity and accordingly to make payment to the Petitioner to set aside the Letters/ Communications vide Ref Nos MMR/KKOCPP/SUR35/2024/3115 dated 09.07.2024 and MMR/KKOCPP/SUR35/2024/723 dated 13/02/2024 issued by Respondent No. 3 and pass...

PERUSED THE RECORD:-

3. The impugned letter/communication, dated 13.02.2024 issued to the petitioner by the 3rd respondent is extracted hereunder:

Vide above cited subject, the following calculation sheet photo copies of Excavation and HSD oil penalties/adjustments of Reconciliation are handing over to M/s.RVR-Saipranav-RNC(JV) representative for your reference.

- 1) Excavation penalties/adjustments calculation sheet.
- 2) HSD oil penalties/adjustments calculation sheet.

4. The impugned letter/communication vide Ref No.MMR/KKOCPP/SUR-35/2024/3115, dated 09.07.2024 issued to the petitioner by the 3rd respondent is extracted hereunder:

Vide order no.7600008478, dated 09.10.2020 you had commenced the OB removal works on 01.10.2020 for a

quantity of 885.803LBCM of OB and also for additional works with conventional equipment at KKOCP mine, Mandamarri area for a period of 48 months. At present you are in 4th year of operations.

After completion of 1st, 2nd, & 3rd years as per terms and conditions of the order, the project authorities have obtained approval from competent authority vide letter no.CRP/CMC/E1119O0421/482/482, dated 31.01.2024 for reconciliation of 1st year, 2nd year & 3rd year operated lead for executed OBR quantity and for revised projections for balance period of the contract. The revised excavation rates and diesel factors were informed to you vide letter no.MMR/KKOCP/SUR-35/2024/679, dated 08.02.2024.

Subsequently, from January 2024 RA Bills, payments/adjustments are made considering the approved revised excavation rate/BCM & supply of diesel in liters/BCM for 1st, 2nd, 3rd & 4th year quantities which was informed to you vide MMR/KKOCP/SUR-35/2024/679, dated 08.02.2024.

In the mean time, you have requested/represented to C&MD vide letters dated 19.01.2024 & 12.02.2024 for thorough review & re-verification of leads, calculations and the entire reconciliation process. Accordingly, a committee was constituted to verify the reconciliation. The above

committee has submitted the report after verification and the same was approved by the competent authority.

As per the committee report it is to inform that the Reconciliation values such as excavation rates/diesel factors which were informed to you vide letter no.MMR/KKOCPSUR-32/2024/723, dated 13.02.2024 stands valid and as such there is no variation.

Hence, the recoveries calculation sheet issued to you vide letter no.MMR/KKOCPSUR-32/2024/723, dated 13.02.2024 regarding excavation and diesel penalties after reconciliation procedure i.e., an amount of Rs.7.53 Crore recovery stands valid and no change in the excavation rates and diesel factors. This recovery amount and any other recoveries will be recovered from RA bills as per order terms and conditions.

5. The impugned letter/communication, vide Ref No.RVR-SAI PRANAV-RNC JV/KKOCPSUR-32/2024/HO3, dated 11.07.2024 of the petitioner is extracted hereunder:

With reference to the above, it is to bring the following few points for your kind consideration and favourable early action at your end

1. Reconciliations: -

(a) Vide Clause no. 1.3.5 (b) at the end of every year payments shall be made for actual lead operated based on survey made as per Clause No. 1.5(c), (iii) whereas no reconciliation was done from the beginning of the contract which is against the order condition. Due to lack of reconciliation, the rates and notified diesel quantities were not revised as per order.

(b) After lapse of 3 years (i.e in the fourth year) initially data was provided by Project Authorities to check the operated leads of 2nd Year and 3rd year projected. It is contrary to the agreement conditions. The file after scrutiny at different levels was sent to corporate for approval.

(c) The file was returned with changes in the data and the project authorities were asked to resubmit. To our surprise, the file was resubmitted to corporate without our involvement

In this connection we requested the Director (P&P) to conduct a meeting for resolving our queries in the data submitted as it is not at all acceptable. Finally, Director (PP) advised the concerned to send back the file to the area authorities for necessary corrections by duly involving contractor.

It has come to our notice that the file is re submitted for approval without considering the objections raised by us and without our involvement.

(d) Again, a committee was constituted on our request and calculated again the 2nd & 3rd year operated leads. They have checked all calculations based on the same fabricated data, without considering the actual data present at site.

(d) On 10.07.2024 a meeting was held at Director's Chamber with all the team members of committee and Corporate Survey Team.

During discussions we raised so many issues and suggested corrections in the lead charts prepared. The meeting ended without any conclusion and Director (P & P), advised us to verify again

(e) The reconciliation procedure itself is not followed by the team. The following are the lapses/deviations

(i) Yearend Survey were not considered

(ii) RL's and distance were changed in the lead charts, without proper support documentation,

(iii) On our enquiry this type of reconciliation is not done earlier in SCCL, warranting an inquiry.

(iv) The entire process seems intentionally flawed for reasons known only to management of SCCL.

2. Goaf Quantities Deductions:

1. Several representations were given to the Project authorities for release of Goaf quantities and for stoppage of further recovery.
2. As per Clause No. 1.14 we have submitted our representations initially to the project authority, Area authority and corporate authority as per the protocols mentioned in the agreement. But so far, no action was initiated from any of the above 3 levels, resulting in significant financial strain and missed targets.
3. We request an immediate solution and inclusion of the quantities in the lead charts to reflect actual operated leads.
- 4 In light of these issues, we request that recovery be suspended until all matters are resolved. Further, we request the release of all withhold amounts to ensure progress of the project, contributing to the development of SCCL and the state of Telangana.

6. The counter affidavit filed on behalf of the respondents and relevant para Nos.9, 19, 20, 21, 22 are extracted hereunder:-

9. In reply to para no.3(e) of the affidavit, it is submitted that as per the Clause No.1.4 of the work order, the supply of diesel is as follows:-

- i. Monthly diesel quantity will be issued as per the notified quantity furnished in the order.
- ii For monthly excess consumption, the equivalent amount will be withheld from monthly bills.
- iii. Monthly saved quantity will be carried forward progressively till the end of the contract.
- iv Yearly reconciliation of diesel corresponding to actual lead and quantity excavated will be done.
- v. The withheld amount on excess consumption of diesel will be refunded on FIFO (First in First Out) basis if saved quantity is accrued in subsequent months.

19. In reply to para no. 3(r) of the affidavit, it is submitted that at the end of third year, the respondents have deducted Rs. 2.04 Cr against the GOAF Quantity of 5.834 Lakh BCM only and not Rs. 3.81 Cr against the alleged GOAF Quantity of 10.61 Lakh BCM. The averments made by the petitioner that the respondents are threatening to further deduct about 8 Lakhs BCM quantity on account of GOAF Quantity is absolutely not true and correct and hence denied. The deductions will be made as per the conditions laid down in the enquiry No. E1119O0421 dated 05.02.2020 of the Order No. 7600008478 dated 09.10.2020, where it was clearly

mentioned that 885.803 LBCM which were awarded to the petitioner after considering the existence of GOAF volume.

20. In reply to para no. 3(s) of the affidavit, it is submitted that as per clause No. 1.10.r (iii), 3 Seam & 4 Seam are developed & depillared and 1 Seam is substantially developed and depillared in the proposed area. The problems like blasting failures, poor fragmentation etc., are to be tackled by the petitioner firm and these cannot be treated as constraints for any shortfall in OBR schedules. Further, as per clause No. 1.10.r (xxiv), the underground coal galleries filled with upper OB bench material shall be cleaned by the contractor. To ensure the partition OB over the underground developed galleries, suitable length of drilling arrangement (at least 10m length of drill rod) shall be made by the contractor. It is submitted that the representations pertaining to GOAF quantities deductions were received from the side of the petitioner firm and as per clause No.1.14 of order, Mine level management committee meeting was held on 06.01.2022 regarding the disputes mentioned vide letter dated 07.11.2021 but the meeting ended with no conclusion and the dispute was not resolved. After this, Area level management committee meeting was held on 04.02.2022 at the office of General Manager, Mandamarri Area regarding the disputes, but here also the disputes were not resolved and the minutes of this meeting were prepared and the petitioner firm has refused to sign the minutes. In this regard the

General Manager (Contract Management) of the respondent company has desired to send the minutes of Area level management committee meeting. On this instruction, project authorities have sent copy of minutes vide Ltr. No. MMR/PO/KKOCPP/G-028/2024/154, dated: 09.01.2024 to the petitioner firm for signatures, but till date, the signed copies were not sent by the petitioner firm, so as to enable the respondent company authorities to prepare and to send the same to the Corporate Level Committee.

21. In reply to para no. 3(t) and (u) of the affidavit, it is submitted that the averments made by the petitioner is absolutely not true and correct and hence denied. The deductions / calculations were submitted to the Petitioner Company vide Lr No. MMR/KKOCPP/SUR-35/2024/723 dated 13.02.2024. Further, it is submitted that the plans which were submitted to the petitioner company at the time of enquiry clearly shows the existence of GOAF Areas. Further, the petitioner has himself submitted in the affidavit at para no. 3(f) that the respondents have orally informed the petitioner that the billed quantities are reduced on account of existence of GOAF. Further, it is submitted that, as per the existing practice of the respondent Company, the volume of the underground galleries and goaves will not be considered for calculation of excavated OB and coal quantities during the monthly survey bills i.e., the void and the GOAF volumes will be deducted from the monthly survey quantity and the same

has been mentioned at Clause No. 1.10.r.iii and Clause No. 1.10.r.xxiv.

22. In reply to para no. 3(v), (w) (x) & (y) of the affidavit, it is submitted that the averments made by the petitioner that the dispute has arisen on account of arbitrary and illegal recovery by the respondent company and also the respondent company being a instrumentality of the State cannot be permitted to make arbitrary and illegal recoveries from the petitioners is absolutely not true and correct and hence denied. It is submitted that initially, the proposal was sent for excavation of 904.504 LBCM. But in the enquiry No. E111900421 dated 05.02.2020 of the Order No. 7600008478 dated 09.10.2020, it was clearly mentioned that 885.803 LBCM which were awarded to you after considering the existence of GOAF volume and also the same was mentioned in the Order of M/s. Durga Construction Company. Further, as already submitted at para no. 9 supra, it is mentioned in the order that 1, 3 & 4 top seams were developed and depillared and the underground galleries or goaved out areas, void will be filled with upper OB benches material only. Hence, the petitioner contractor shall arrange to clean the filled OB Material which was already (21) considered for estimation of OB. Accordingly, the deductions were made and bills were settled to the Contractor and same is being done to all OBR Contractors throughout the respondent company. As such, the reduction of the executed quantity from that of 3-D Laser

Survey Data from the monthly bills is as per the rules of the respondent company.

7. The case of the petitioner in brief as per the averments made in the affidavit filed by the petitioner in support of the present Writ Petition is as under:-

a) It is the case of the petitioner that, the petitioner is a joint venture comprising of M/s R. Vidyasagar Rao, a Registered Partnership Firm, M/s Sai Pranav Infra Private Limited and M/s R.N. Constructions and in response to the Enquiry No. E1119O0421 dated 05.02.2020, the petitioner herein had participated in the bid and was awarded the work of drilling, excavation, loading, transportation, dumping, spreading and levelling etc., of 885.803 LBCM of OB which includes 11.262 LBCM coal from splinter coal seams & coal bands with conventional equipment and also additional works, viz., 5000 shovel hours, 5000 dozer hours & 50000RMT of drilling at KK OCP Mine, Mandamarri Area for a period of 48 months, vide Order No. 7600008478, dated 09.10.2020. The total value of the work awarded to the Petitioner was Rs.75,854.851 Lakhs(exclusive of GST @18%).

b) It is further the case of the petitioner that, up to 31.05.2024 the Petitioner was Billed up to a quantity of 6,32,32,901.650 LBCM and the Petitioner had furnished Performance Bank Guarantee No. 0505521BG0000908, dated 26.03.2021 for Rs. 4,11,12,533/- valid up to 23.03.2025 and Retention Money BankGuarantee 05055238C0000218, dated 25.01.2023 for Rs.3,08,34,978/-valid up to 10.03.2025 in favour of Respondent No. 1 in terms of the Order.

c) As per the terms of the Order dated 09.10.2020, monthly diesel quantity will be issued by the Respondents considering the notified quantity at the rate of 0.708 litres per BCM at the notified rate of Rs.Rs.68.15/- per litres, which will be deducted from the bills of the Petitioner and in case of monthly excess consumption, the equivalent amount will be withheld from the monthly bills of the Petitioner.

d) It is further the case of the petitioner that the petitioner that, at the beginning of the contract the Petitioner was given 3D Laser Scanner Data as to the surveyed quantity in a Pen Drive as per terms of the Order. During the execution of the work the

Respondents made payments to the Petitioner JV under the monthly bills for the quantity mentioned therein. However, in the month of September 2021, the Petitioner having noticed that recording of billed quantity under the monthly bills prepared for the first (1st) year being less than the actual quantity executed by it and the same was objected by the petitioner for the same for which the Respondents orally informed the Petitioner that the billed quantities are reduced on account of existence of GOAF.

e) Subsequently, by Letter dated 21.09.2021, the Petitioner objected to the same as the terms of contract do not provide for any reduction of quantities on account of existence of GOAF and requested the Respondents to make payment for the deducted quantity and not to deduct any quantity further during the entire contract period. However, the Respondents, without any right or justification continued to deduct and record the quantity than the actual quantity executed by the Petitioner in the monthly bills and are making lesser payments.

f) It is further the case of the petitioner that the cumulative quantities (Gross quantity including coal) at the end of 1st year, 2nd

year, 3rd year and 4th year up to May 2024 as per the 3D Laser Scanner Data furnished to the Petitioner, coal quantities, actual billed quantities and the difference of quantities clearly show that a total quantity of 14,50,899.28 BCM has been deducted by the Respondents up to May 2024. Further as per the terms of the Enquiry dated E111900421 dated 05.02.2020 or the Order dated 09.10.2020, no quantity is specified on account of existence of 'GOAF'.

g) It is further the case of the petitioner that the petitioner that, since the UG Plans of 3 and 4 Seams as approved by the Director General of Mines Safety vide permission Letter No. HR-2/PERM/2016/2387.HYD, dated 22.07.2026 furnished to the Petitioner by the Respondents clearly refers to caved GOAFs, the question of claiming any quantity in respect of GOAF Areas for reduction in the quantity does not arise at all.

h) Aggrieved by the said action of respondents, the petitioner herein through letter dated 12.02.2024 requested the Chairman & Managing Director of Respondent No. 1 Company seeking his intervention in the matter. However, the same was not considered.

Subsequently, through letter dated 13.02.2024, the Respondent No.3 has claimed Rs.30.42 crores towards total recovery / adjustment from the Petitioner, considering the executed quantity of 5,74,63,321.37CM, as billed, after reduction of GOAF quantity towards lead reconciliation contrary to the terms of the contract and towards diesel penalty/ adjustment from October,2020 to December 2023.

i) Subsequently, the Respondent No.3 by letter dated 09.07.2024, referring to the Letter dated 13.02.2024 claimed that Rs.7.53 crores recovered stands valid and declined to change the excavation rates and diesel factors and further threatened that recoveries also will be made from the bills of the Petitioner.

j) It is further the case of the petitioner that the Respondents without reconciling the leads at end of each year withheld huge amounts from the monthly bills of the Petitioner even though the Petitioner has followed the fixed transport route indicated in the plan enclosed to the Order for transporting the overburden to the order dumps from the order benches as specified in the Order and so far deducted Rs.3.81 Cr up to the end of third year against the

alleged GOAF Quantity of 10.61 Lakh BCM. Further, the Respondents have also recovered corresponding diesel quantity at the rate of 708 per BCM which comes to 7,65,542 Litres. Moreover, the Respondents are also threatening to further deduct about 8 Lakhs BCM quantity on account of GOAF Quantity and corresponding recovery against diesel for 9 Lakhs Litres at the rate of Rs.99/- per litre.

k) Aggrieved by the said action of the respondents, the petitioner herein through letter dated 11.07.2024 requested the Chairman & Managing Director to intervene and not to make recoveries until the issues are resolved considering the adverse effect of such recoveries on the progress of the work. But the same was not considered.

l) Furthermore, the total effect due to the above arbitrary and illegal recovery on account of GOAF Quantity by the Respondents as arrived by the Petitioner is Rs. 20.39 Cr (approx.), up to third year, out of which an amount of Rs. 12 Crores (approx.) is already recovered/ adjusted on account of reduction in quantity and corresponding cost of diesel and the balance amount threatened to

be recovered / adjusted from the future bills of the Petitioner JV. However, the Petitioner is entitled for payment of bills for the quantity executed without any reduction on account of GOAF with respect to the future bills. Since, the Respondent No. 1 is holding Performance Bank Guarantee for a value of Rs. 4,11,12,533/-, valid up to 23.03.2025. Hence, the present Writ Petition has been filed.

DISCUSSION AND CONCLUSION:

8. It is the specific case of the petitioner that in response to the Enquiry No.E111900421, dated 05.02.2020, the petitioner a registered partnership firm registered under the Indian Partnership Act and a company registered under the Indian Partnership Act participated in the bid and was awarded the work "Drilling, excavation, Loading, Transportation, dumping, spreading & leveling etc., of 885.803 LBCM of OB which includes 11.262 LBCM coal from splinter coal seams & coal bands with conventional equipment and also additional works, viz, 5000 shovel hours, 5000 dozer hours & 50000 RMT of drilling at KK OCP Mine, Mandamarri Area for a period of 48 months', vide Order No.7600008478, date 09.10.2020. The total value of

the work awarded to the petitioner was Rs.75854.851 Lakhs (exclusive of GST @18%).Presently the petitioner was Billed up to a quantity of 6,32,32,901.650 LBCM, up to 31.05.2024.

9. A bare perusal of the terms of the order dated 09.10.2020 issued to the petitioner by the respondents indicates that monthly diesel quantity will be issued by the Respondents considering the notified quantity @ 0.708 litres per BCM at the notified rate of Rs.68.15/- per litre, which will be deducted from the bills of the petitioner and in case of monthly excess consumption, the equivalent amount will be withheld from the monthly bills of the petitioner. Under clause 1.1.4 of the Order the year-wise bench-wise quantities are specified, commencing from October 2020 to September 2024 (for 48 months) and the petitioner JV is required to adhere to the said quantities, failing which, month-wise and year-wise penalties will be levied on the unexecuted quantity. Further, in case of non-completion of the work in scheduled time, the terms of the order also provide for levy of penalty @ 15% on the value of the left-over quantity of final year scheduled quantity of the contract

period or in case of execution of the balance quantity beyond scheduled period penalty as provided under Clause 2.3.4(c) of the Order.

10. It is further the specific case of the petitioner that during the execution of the work, the respondents made payments to the petitioner JV under the monthly bills for the quantity mentioned therein. However, in the month of September, 2021, the petitioner having noticed that recording of billed quantity under the monthly bills prepared for the first year being less than the actual quantity executed by it, objected for the same for which the respondents orally informed the petitioner that the billed quantities are reduced on account of existence of GOAF. The petitioner objected to the same vide letter dated 21.09.2021 as the terms of the Contract do not provide for any reduction of quantities on account of existence of GOAF and requested the respondents to make payment for the deducted quantity and not to deduct any quantity further during entire contract period. The respondents however without any right or justification continued to deduct and record the quantity

than the actual quantity executed by the petitioner in the monthly bills by making lesser payments.

11. It is further the specific case of the petitioner that a total quantity of 14,50,899.28 BCM had been deducted by the respondents up to May, 2024 and any recovery by respondent No.1 shall be covered by specific terms in the Enquiry itself so as to enable the prospective bidders to understand the nature of work and the financial implications involved in the execution of the same and accordingly, quote its rate at the time of bidding. It is further contended by the learned senior designated counsel appearing on behalf of the petitioner that in the absence of specific mentioning of GOAF quantity and methodology to deal with the same against the total awarded quantity to be executed by the petitioner, reduction of the executed quantity contrary to the quantity as per 3D laser scanner data from the monthly bills of the petitioner and making lesser bill payments is illegal, arbitrary and contrary to the terms of contract.

12. It is specifically averred by the petitioner at paragraph No.3(r) &(s) of the affidavit filed by the petitioner in support of the present Writ Petition as under:-

(r) "It is submitted that the Respondents have so far deducted Rs.3.81 Cr up to the end of third year against the alleged Goaf Quantity of 10.61 Lakh BCM. Further, the Respondents have also recovered corresponding diesel quantity @.708 per BCM which comes to 7,65,542 Ltrs. The Respondents are also threatening to further deduct about 8 Lakhs BCM quantity on account of Goaf quantity and corresponding recovery against diesel for 9 Lakhs Litres @Rs.99/- per litre.

(s) It is submitted that finally the petitioner by letter dated 11.07.2024 requested the Chairman & Managing Director to intervene and not to make recoveries until the issues are resolve considering the adverse effect of such recoveries on the progress of the work. But no information as to initiating a positive action on the request of the petitioner has been intimated so far to the petitioner.

13. The learned senior designate counsel appearing on behalf of the petitioner contends that without providing the required data in the Enquiry, the respondents cannot be

permitted to reduce any quantity of OB executed by the petitioner as per the terms of the Contract on the pretext of existence of GOAF and the reduction of the surveyed quantity and making payment for the reduced quantity by respondent No.2 is wholly unjustified and illegal and therefore, the Writ Petition has to be allowed as prayed for.

14. The learned senior designate counsel appearing on behalf of the respondents placing reliance on the averments made in the counter affidavit filed on behalf of the respondents, disputes the averments pleaded by the petitioner in the affidavit filed in support of the Writ Petition and also the pleas put-forth by the petitioner and draws attention of this Court to para No. 10 of the counter affidavit filed on behalf of the respondents and the same is extracted hereunder:-

In reply to para no. 3(f) of the affidavit, it is submitted the billing and quantity assessments were carried out transparently using 3D Laser Scanner Data and scrupulously scrutinized by the respondent company. The reductions were based on actual measurements and reduction of Coal extraction by departmental equipment and GOAF quantities.

The petitioner Company was informed of these adjustments during the contract execution. In this regard, the petitioner has himself submitted in the affidavit that the respondents have orally informed the petitioner that the billed quantities are reduced on account of existence of GOAF. Further, it is submitted that, as per the existing practice of the respondent Company, the volume of the underground galleries and goaves will not be considered for calculation of excavated OB and coal quantities during the monthly survey bills i.e., the void and the GOAF volumes will be deducted from the monthly survey quantity. The same has been mentioned in the work order at Clauses which are extracted below:

Clause No. 1.10.r.iii: -

"Since No. 3 & 4 Seams are developed and depillared and 1 Seam is substantially developed and depillared in the proposed area. The problems like failure poor fragmentation etc., are to be tackled by the off-loading agency and these cannot be treated as constraints for any shortfall OBR schedules...."

Clause No. 1.10.r.xxiv: -

"The underground coal galleries filled with upper OB bench material shall be cleaned by the contractor. To ensure the partition OB over the underground developed galleries

suitable length of drilling arrangement (atleast 10m length of drill rod) shall be made by the contractor."

From the above, it is already mentioned in the order that 1, 3 & 4 top seams were developed and depillared and the underground galleries or goaved out areas, void will be filled with upper OB benches material only. Hence, the contractor shall arrange to clean the filled OB Material which was already considered for estimation of OB. Accordingly, the deductions were made and bills were settled to the Contractor and same is being done to all OBR Contractors throughout the Company

15. The learned senior designated counsel appearing on behalf of the respondents placing reliance on the averments made in the counter affidavit filed on behalf of the respondents contends that the Writ Petition is not maintainable either in law or on facts as the petitioner failed to demonstrate infringement of any constitutional right much less any fundamental right. Since the Writ Petition arises out of contracts entered into between the petitioner and the respondents during the course of its business, the petitioner has to work out its remedies before competent civil Court, petitioner had raised serious disputed question of

facts which requires volumes of evidence to be considered including examination of witness by leading evidence and hence, the Writ Petition needs to be dismissed.

16. Regulation 2(ze) of the Coal Mines Regulations, 2017 defines GOAF as follows:-

“ GOAF means any part of workings below ground wherefrom a pillar or part thereof, or in the case of longwall workings, coal has been extracted but which is not a working place.’

In case of abandoning the underground mining operations, the voids existing due to excavation of coal shall be caved in as per the DGMS Circulars.

This Court referring to the definition of GOAF as extracted above opines that the specific plea of the petitioner that, the petitioner is entitled for payment of bills for the quantity executed without any reduction on account of GOAF with respect to the future bills cannot be said to be a dispute that require adjudication on facts as contended by the petitioner and the same cannot be decided under Article 226 of the Constitution of India.

17. A bare perusal of the letter dated 11.07.2024 addressed to the 1st respondent herein by the petitioner clearly indicates a specific plea that, the petitioner had submitted representations to the project Authority, area Authority and corporate Authority as per Clause 1.14, but so far no action had been initiated for any of the three levels and hence, the petitioner was constrained to approach the Court by filing the present Writ Petition.

18. Clause 1.14 of the subject tender deals with settlement of disputes and the same is extracted hereunder:-

1.14 SETTLEMENT OF DISPUTES:

ISSUE AND DISPUTE RESOLUTION PROTOCOL

Any dispute or disagreement between SCCL and the contractor hereto arising out of or in connection with the contract or the performance of any of the obligations of SCCL and the contractor hereunder or referred to herein, including an issue or dispute as to breach or termination of this contract or as to any claim in tort, in equity or pursuant to any statute ("Dispute")

shall be referred first to the Mine Management Committee which shall attempt to reach a consensus on the matter;

After referring the issue, if the Mine Management Committee fails to resolve issue within 7 (seven) days, it shall be referred to Area Management Committee.

After referring the issue, if the Area Management Committee fails to resolve issue within (seven) days. it shall be referred to Corporate Management Committee. Corporate Management Committee shall resolve the Dispute within 21 calendar days of referral to them.

Any dispute or disagreement not resolved as stated above shall be decided by 'CIVIL COURT' of competent jurisdiction at Mancherial and Bhadradri-Kothagudem districts and not at Arbitration.

"Management Committee" means the committee formed for smooth execution of the contract which shall comprise the representatives of SCCL and the contractor. The members of the committees may be changed by the parties with intimation to the other party. The parties may co-opt the other members as per the requirement and inform the other party. (Both the contractor and SCCL shall be individually

referred to as a "Party" and collectively referred to as the "Parties".)

The Management Committee shall be formed within one month of issue of the order. The Management Committee shall function at three levels, viz., mine level, area level and corporate level.

Issues pertaining to site plans, specifications, measurements, manner of execution or anything connected with the work, not specially provided for herein under or in respect of meaning of any clause of the terms and conditions of order or any disputes arising during the execution of the contract shall be referred to the Management Committee at appropriate level.

19. The Division Bench of the Apex Court in a judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, referred to Whirlpool Corporation Vs. Registrar of Trade Marks (reported in (1998) 8 SCC 1) and further the said view had been reiterated by a Full Bench of the Apex Court (3 Judges) in a judgment reported in (2021) SCC Online SC page 801 in Magadh Sugar and Energy Limited Vs. State of

Bihar and Others dated 24.09.2021 and in the said judgment it is observed as under :

28. *The principles of law which emerge are that:*

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

This Court opines that the facts of the present case and the material on record clearly indicates that the present case falls under 28(i) of the aforesaid judgment.

20. This Court opines that the judgments relied upon by the learned counsel appearing on behalf of the petitioner do not apply to the facts of the present case.

21. Taking into consideration:

- i) The aforesaid facts and circumstances of the case,**
- ii) The submissions put-forth by the learned senior designated counsel appearing on behalf of the petitioner and the learned senior designated counsel appearing on behalf of the respondents.**
- iii) The averments made in the counter affidavit filed on behalf of the respondents (referred to and extracted above)**

iv) The view of the Apex Court in the judgments (referred to and extracted above) and again enlisted below;-

a) M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, dated 20.04.2021 reported in (2021) 6 SCC 771

b) Whirlpool Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1.

c) Magadh Sugar and Energy Limited Vs. State of Bihar and Others, dated 24.09.2021 reported in (2021) SCC Online SC page 801.

v) In view of the fact as borne on record that the petitioner had already addressed letter dated 11.07.2024 to the 1st respondent herein (referred to and extracted above) which had even been acknowledged by the office of the 1st respondent on 15.07.2024 where under, the petitioner intimated to the 1st respondent that the petitioner gave several representations as per Clause 1.14 to the project Authorities for release of GOAF quantities and for stoppage

of further recovery to the project Authority, area Authority and corporate Authority as per the protocols mentioned in the Agreement entered into between the petitioner and respondents herein, but however no action had been initiated so far in any of the said three levels, this Court opines that the respondents are bound to follow Clause 1.14 procedure for settlement of disputes between the petitioner and respondents herein.

The Writ Petition is disposed of directing the respondents to consider the representation of the petitioner dated 11.07.2024 as per Clause 1.14 and ensure to resolve the dispute of the petitioner for release of GOAF quantities and for stoppage of further recovery in accordance to law, in conformity with principles of natural justice by providing an opportunity of personal hearing to the petitioner within a period of six (06) weeks from the date of receipt of the copy of the order and duly communicate the decision to the petitioner.

Till the above exercise is initiated and concluded by the respondents herein by passing of appropriate orders duly

following Clause 1.14 of the subject tender procedure as per the directions stipulated above within the time period as indicated above, the respondents shall not initiate any coercive steps in pursuance to Letters/Communications via Ref.Nos. MMR/KKOCPSUR-35/2024/723 dated 13.02.2024 and MMR/KKOCPSUR-35/2024/3115 date 09.0.2024 issue by the respondent No.3. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 25.11.2024

Note : L.R. Copy to be marked.
B/o. *ktm*

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.22818 OF 2024
(L.R.copy to be marked)

Date: 25.11.2024.

ktm