IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(C) No.3303 of 2018

1.M/s RITES LIMITED, a Government of India Undertaking, under the Ministry of Railways and a Government Company within the meaning of Section 617 of the Companies Act, 1956 having Registered Office at 27, Barakhambha Road, New Delhi, and Corporate Office at RITES Bhawan, 1, Sector -29 P.O. Gurgaon, P.S. Gurgaon, District Gurgaon- 122 001 in the State of Haryana, through its General Manager, Shri Dharm Gaj Prasad, aged 57 years, son of late Makrand Prasad Resident of Flat No.674 Khelgaon, PO Khelgaon PS Khelgaon District Delhi
2.General Manager, MS RITES LIMITED .... Petitioners

-- *Versus* --

1.The State of Jharkhand
2.Jharkhand Urja Vikas Nigam Limited [JUVNL], earlier known as Jharkhand State Electricity Board[JSEB], through its General Manager having its office at Engineering Building, HEC, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District Ranchi .... Opposite Parties

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Vikas Pandey, Advocate
Mr. Sanjay Kumar Prasad, Advocate
Mr. Piyush Poddar, Advocate
Mr.Janak Kumar Mishra, Advocate
For Respondent J.U.V.N.L :- Mr. Mrinal Kanti Roy, Advocate

12/16th February, 2024

Heard Mr. Vikas Pandey, the learned counsel assisted by Mr. Sanjay Kumar Prasad, Mr. Piyush Poddar and Mr. Janak Kumar Mishra, the learned counsels, appearing on behalf of the petitioner and Mr. Mrinal Kanti Roy, the learned counsel appearing on behalf of the respondent-Jharkhand

Urja Vikas Nigam Limited (JUVNL).

2. The prayer in this petition has been made to appoint impartial sole-arbitrator with regard to 10-agreements being no.01 to 10/RE/JSEB/03-04 all dated 16.03.2004 entered between the RITES Limited, a Government of India Undertaking and Jharkhand State Electricity Board [now, Jharkhand Urja Vikas Nigam Limited (JUVNL)].

3. Mr. Vikas Pandey, the learned counsel appearing on behalf of the petitioner submits that the petitioner is a Government of India Undertaking under the Ministry of Railways and a Government Company and all its Directors and most of its share-holders are citizens of India. He further submits that Jharkhand State Electricity Board (JSEB) is a Body constituted under the Indian Electricity Act, 1910 and is a Department of Government of Jharkhand, engaged in business of generation and distribution of electricity in the State of Jharkhand. He further submits that Jharkhand State Electricity Board floated tender for electrification of 4923 villages under 5(five) packages by Tender Notice No.123/PR/JSEB/03. He submits that the petitioner was found the lowest bidder and as such on due deliberation and negotiation, the whole work of electrification was awarded to it by 10 work orders mentioned in paragraph no.9 of the writ petition. He submits that after negotiation a draft contract agreement for all packages were prepared, however, when that contract was being examined, it was found that arbitration clause is not there, and therefore, a request was made by the petitioner to include permanent machinery of arbitration for resolution of dispute, and accordingly, the arbitration clause was also inserted in the agreement and finally, the final agreement was entered into between the parties, wherein the arbitration clause was also made. He submits that so far agreement nos.1 to 10 are concerned, all the agreements were on the same and similar terms and conditions. He submits that in course of execution of the contract work some dispute and differences arose between the parties, and accordingly, the RITES

Limited and others by letter dated 16.09.2005 invoked the arbitration clause and requested the Secretary, Department of Public Enterprise, Government of India to appoint the Arbitrator for redressal of their genuine grievance. Pursuant to that, Dr. Geeta Rawat was appointed as sole Arbitrator who entered into the Reference and called upon the parties to file their written statement. He submits that both the parties had filed their written statements. He further submits that respondent-JUVNL has also filed their counter claim which has been disclosed in paragraph no.16 of the writ petition. He submits that both the parties were effectively participated in the said arbitration proceeding and after hearing both the sides, the Award Dated 19.01.2011 was passed by the sole-Arbitrator namely Dr. Geeta Rawat allowing some of the claim of the petitioner and not allowing some of the claim. The counter claim of the respondent-JUVNL was rejected. He further submits that the said award was challenged by the petitioner before the appellate authority and the appellate authority by the order dated 19.09.2011 had allowed the appeal and enhanced the awarded amount to the tune of about Rs.231 crores. He submits that after the appellate authority award, the JUVNL moved before the learned Commercial Court invoking Section 34 of the Arbitration and Conciliation Act, 1996 by way of filing Miscellaneous Case No.16 of 2011 challenged the award as well as the appellate authority order which was decided by order dated 22.11.2017. He submits that learned Commercial Court has been pleased to dismiss the said petition considering that it is not maintainable as Arbitration and Conciliation Act, 1940 as well as Arbitration and Conciliation Act, 1996 are not applicable so far permanent machinery of arbitration was out the purview of those Acts and it was held to be not maintainable and liberty was provided to pursue the remedy in accordance with law. He submits that in this background, the petitioner has filed the present writ petition. He further submits that the petitioner is not having any remedy now and the litigation has not come to an end. He submits that

identical was the situation in the case of "***Northern Coalfields Limited v. Heaving Engineering Corporation Limited and Another", (2016) 8 SCC 685.*** He submits that in the case of "***Northern Coalfields Limited" (supra),*** the permanent machinery of arbitration was the consideration before the Hon'ble Supreme Court. He submits that, in that case also, the parties were in the amidst of finality of the dispute and that was examined by the Hon'ble Supreme Court. He refers to paragraph nos.13, 14, 18, 19, 23, 26, 27, 28, 29 and 30 which of the said judgment, which are quoted below:

> *"**13.** We have given our anxious consideration to the submissions made at the Bar. Before we deal with the contentions urged at the Bar, we need to advert to the historical backdrop in which the special mechanism came to be prescribed by the Government.*
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> ***14.** Commercial disputes between public sector enterprises inter se as well as between the public sector enterprises and the government departments were in the ordinary course settled through arbitration by government officers or good offices of empowered government agencies like Bureau of Public Enterprises. The Department of Legal Affairs however submitted a note dated 8-5-1987 on the subject which was considered by a Committee of Secretaries in its meeting held on 26-6-1987. The Committee of Secretaries suggested that a permanent machinery for arbitration should be set up in the Department of Public Enterprises to settle all commercial disputes between PSE inter se and between PSE and government department excluding disputes concerning income tax, customs and excise. The Committee also suggested that there should be a contractual clause binding the parties to the commercial contracts to refer all their disputes for settlement to the Permanent Machinery of Arbitrators. The Committee of Secretaries proposed that Bureau of Public Enterprises should bring a note for consideration of the Cabinet in that regard which note was prepared and upon submission to the Cabinet was approved in its meeting held on 24-2-1989. The Cabinet decision envisaged that all public sector enterprises include a contractual clause in their future and current commercial contracts regarding settlement of disputes by arbitration by resorting to Permanent Machinery of Arbitration and that administrative Ministries shall issue necessary directives to the PSEs under the relevant clause of the articles of association. The directives and draft outline of procedure to be followed by the Permanent Machinery of Arbitrators in the Bureau of Public*

Enterprises was accordingly issued in terms of DPE D.O. No. 15(9)/86-BPE(Fin) dated 29-3-1989. The procedure for settlement of disputes so devised was however outside the framework of the Arbitration Act, 1940 which then held the field. This is evident from Para 2 of the draft outline of the procedure which reads as under:

"2. The Arbitration Act, 1940 (10 of 1940) shall not be applicable to the arbitration under this clause. The award of the sole arbitrator shall be binding upon the parties to the dispute. Provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such further reference, the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively."

18. *In CCE v. Bharat Petroleum Corpn. Ltd. [CCE v. Bharat Petroleum Corpn. Ltd., (2010) 13 SCC 42] , this Court held that working of the CoD (Committee on Disputes) had failed as numerous difficulties had been experienced by the CoD which were expressed in the Cabinet Secretary's Letter dated 9-3-2010. This Court observed: (SCC p. 43, paras 4-5)*

"4. In our experience, the working of the Committee on Disputes (CoD) has failed. Numerous difficulties are experienced by CoD which are expressed in the Letter of the Cabinet Secretary, dated 9-3-2010. Apart from the said letter, we find in numerous matters concerning public sector companies that different views are expressed by CoD which results not only in delay in filing of matters but also results into further litigation.

5. In the circumstances, we find merit in the submission advanced before us by the learned Attorney General that the time has come to revisit the orders passed by the three-Judge Bench of this Court in Oil and Natural Gas Commission v. CCE [Oil and Natural Gas Commission v. CCE, 1995 Supp (4) SCC 541] ."

19. *The matter was accordingly referred to a larger Bench to reconsider the earlier decisions directing constitution of the CoD. The matter was eventually heard and decided by a five-Judge Bench of this Court in Electronics Corpn. of India Ltd. v. Union of India [Electronics Corpn. of India Ltd. v. Union of India, (2011) 3 SCC 404 : (2011) 1 SCC (Civ) 729 : (2011) 1 SCC (L&S) 514] . This Court after noticing various flaws in the working of the Committee on Disputes ordered recall of its previous orders passed by it in the following words: (SCC pp. 407-08, paras 12-19)*

"12. By order dated 11-9-1991, in Oil and Natural Gas Commission v. CCE [Oil and Natural Gas Commission v. CCE, 1992 Supp (2) SCC 432] , this Court noted that 'public sector undertakings of the Central Government and the Union of India should not fight their litigations in court' (SCC p. 432, para 3). Consequently, the Cabinet Secretary, Government of India was 'called upon to handle the matter personally'.

13. This was followed by the order dated 11-10-1991 in ONGC-2 case [Oil and Natural Gas Commission v. CCE, 1995 Supp (4) SCC 541] where this Court directed the Government of India to

'set up a Committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation'. (SCC pp. 541-42, para 3)

14. Thereafter, in ONGC-3 case [Oil and Natural Gas Commission v. CCE, (2004) 6 SCC 437] , this Court directed that in the absence of clearance from the "Committee of Secretaries" (CoS), any legal proceeding will not be proceeded with. This was subject to the rider that appeals and petitions filed without such clearance could be filed to save limitation. It was, however, directed that the needful should be done within one month from such filing, failing which the matter would not be proceeded with.

15. By another order dated 20-7-2007 (ONGC-4 case [ONGC Ltd. v. City and Industrial Development Corpn. Maharashtra Ltd., (2007) 7 SCC 39]) this Court extended the concept of dispute resolution by High-Powered Committee to amicably resolve the disputes involving the State Governments and their instrumentalities. The idea behind setting up of this Committee, initially, called a "High-Powered Committee" (HPC), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to the court without the parties having had an opportunity of conciliation before an in-house committee. (See SCC paras 3-4 of the order dated 7-1-1994 in ONGC-3 case [Oil and Natural Gas Commission v. CCE, (2004) 6 SCC 437] .)

16. Whilst the principle and the object behind the aforestated orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in one case and refused in the other. This has led a PSU to institute an SLP in this Court on the ground of discrimination. We need not multiply such illustrations.

17. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility.

18. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various orders reported as (i) Oil and Natural Gas Commission v. CCE [Oil and Natural Gas Commission v. CCE, 1995 Supp (4) SCC 541] dated 11-10-1991, (ii) Oil and Natural Gas Commission v. CCE [Oil and Natural Gas Commission v. CCE, (2004) 6 SCC 437] dated 7-1-1994, and (iii) ONGC Ltd. v. City and Industrial Development Corpn. Maharashtra Ltd. [ONGC Ltd. v. City and Industrial Development Corpn. Maharashtra Ltd., (2007) 7 SCC 39] dated 20-7-2007.

19. In the circumstances, we hereby recall the following orders reported in:

(i) Oil and Natural Gas Commission v. CCE [Oil and Natural Gas Commission v. CCE, 1995 Supp (4) SCC 541] dated 11-10-1991

(ii) Oil and Natural Gas Commission v. CCE [Oil and Natural Gas Commission v. CCE, (2004) 6 SCC 437] dated 7-1-1994

(iii) ONGC Ltd. v. City and Industrial Development Corpn. Maharashtra Ltd. [ONGC Ltd. v. City and Industrial Development Corpn. Maharashtra Ltd., (2007) 7 SCC 39] dated 20-7-2007."

***23.** The net effect of the above can be summarised as under:*

***23.1.** The Permanent Machinery of Arbitration was put in place as early as in March 1989, even before ONGC-2 [Oil and*

Natural Gas Commission v. CCE, 1995 Supp (4) SCC 541] was decided on 11-10-1991.

23.2. *The Permanent Machinery of Arbitration was outside the statutory provision then regulating arbitrations in this country, namely, the Arbitration Act, 1940 (10 of 1940).*

23.3. *The award made in terms of the Permanent Machinery of Arbitration being outside the provisions of the Arbitration Act, 1940 would not constitute an award under the said legislation and would therefore neither be amenable to be set aside under the said statute nor be made a rule of the court to be enforceable as a decree lawfully passed against the judgment-debtor.*

23.4. *The Committee on Disputes set up under the orders of this Court in the series of orders passed in ONGC cases did not prevent filing of a suit or proceedings by one PSE/PSU against another or by one government department against another. The only restriction was that even when such suit or proceedings were instituted the same shall not be proceeded with till such time the Committee on Disputes granted permission to the party approaching the Court.*

23.5. *The time-limit fixed for obtaining such permission was also only directory and did not render the suit and/or proceedings illegal if permission was not produced within the stipulated period.*

23.6. *The Committee on Disputes was required to grant permission for instituting or pursuing the proceedings. If the High-Powered Committee (CoD) was unable to resolve the dispute for reasons to be recorded by it, it was required to grant clearance for litigation.*

23.7. *The Committee on Disputes' experience was found to be unsatisfactory and the directives issued by the Court regarding its constitution and matters incidental thereto were recalled by the Constitution Bench [Electronics Corpn. of India Ltd. v. Union of India, (2011) 3 SCC 404 : (2011) 1 SCC (Civ) 729 : (2011) 1 SCC (L&S) 514] of this Court thereby removing the impediment which was placed upon the courts'/tribunals' powers to proceed with the suit/legal proceedings. The Department of Public Enterprises has subsequent to the recall of the orders in the ONGC line of cases modified its guidelines deleting the requirements for a CoD clearance for resorting to the Permanent Machinery of Arbitration; and*

23.8. *The Permanent Machinery of Arbitration was and continues to be outside the purview of the Arbitration Act, 1940 now replaced by the Arbitration and Conciliation Act, 1996.*

26. *That brings us to the question whether we ought to remand the matter back to the civil court for adjudication and if*

that were not a desirable course of action whether adjudication of the matters in dispute by way of arbitration would be a better option.

27. *It was argued by Mr Ranjit Kumar, learned Solicitor General that the respondent has an award in its favour made in terms of the Permanent Machinery of Arbitration and that so long as that award stands there is no need for any fresh or further arbitration on the claims already adjudicated upon under the said mechanism. The argument appears to be attractive at first blush but does not survive a closer scrutiny. That is so because an arbitral award under the Permanent Machinery of Arbitration may give quietus to the controversy if the same is accepted by the parties to the dispute. In cases, however, a party does not accept the award, as is the position in the case at hand, the arbitral award may not put an end to the controversy. Such an award being outside the framework of the law governing arbitration will not be legally enforceable in a court of law. In fairness to Mr Ranjit Kumar, learned Additional Solicitor General, we must mention that he did not dispute that the award made by the arbitrator under the Permanent Machinery of Arbitration was outside the statute regulating arbitration in this country and was not, therefore, executable in law. What he argued was that since both sides to the disputes were government corporations, the Government could adopt administrative mechanism for recovering the amount held payable to the respondent. That does not, in our opinion, answer the question. Remedies which are available to the Government on the administrative side cannot substitute remedies that are available to a losing party according to the law of the land. The appellant has lost before the arbitrators in terms of the Permanent Machinery of Arbitration and is stoutly disputing its liability on several grounds. The dispute regarding liability of the appellant under the contract, therefore, continues to loom large so long as it is not resolved finally and effectually in accordance with law. No such effective adjudication recognised by law has so far taken place. That being so, the right of the appellant to demand such an adjudication cannot be denied simply because it happens to be a government-owned company for even when the appellant is a government company, it has its legal character as an entity separate from the Government. Just because it had resorted to the permanent procedure or taken part in the proceedings there can be no estoppel against its seeking redress in accordance with law. That is precisely what it did when it filed a suit for declaration that the award was bad for a variety of reasons and also that the contract stood annulled on account of the breach committed by the respondents.*

> ***28.*** *Having said that, Mr Patwalia made a candid statement after instructions that the appellant would have no difficulty in having all the claims and counterclaims of the appellants and the respondent Corporation referred to adjudication in accordance with law to a sole arbitrator to be nominated by this Court. To facilitate such a reference Mr Patwalia has on instructions sought deletion of Respondent 2 from the array of respondents which prayer we see no reason to decline especially because the dispute is between the two corporations which alone ought to be referred to adjudication in accordance with law. Respondent 2 shall accordingly stand deleted from the array of parties.*
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> ***29.*** *Mr Ranjit Kumar was, however, somewhat diffident in making a concession that the claim could be referred for a fresh round of arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. That diffidence does not prevent us from making a suitable order of reference to a sole arbitrator for adjudication of all outstanding disputes between the two corporations especially because the alternative to such arbitration is a long-drawn, expensive and cumbersome trial of the suit filed by the appellant before a civil court and the difficulties that beset the execution of an award made under a non-statutory administrative mechanism. Both these courses are unattractive with no prospects of an early fruition even after the parties have fought each other for nearly twenty years.*
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> ***30.*** *In the result we allow this appeal and set aside the judgment and order [Northern Coalfields Ltd. v. Heavy Engg. Corpn. Ltd., 2008 SCC OnLine Del 904 : ILR (2009) 1 Del 633] passed by the High Court. We further direct that all disputes relating to and arising out of the contracts executed between the appellant Company and the respondent Corporation shall stand referred for adjudication to Hon'ble Mr Justice K.G. Balakrishnan, Former Chief Justice of this Court, who is hereby appointed as sole arbitrator to adjudicate upon all claims and counterclaims which the parties may choose to file before him. Civil Suit (OS) No. 1709 of 2000 shall also stand disposed of in terms of this order. The parties shall appear before the arbitrator on 22-8-2016 for further directions. The arbitrator shall be free to determine his own fee. No costs."*

4. Relying on the above judgment, he submits that the sole arbitrator may be appointed by this Court to decide the dispute afresh on all the points as the petitioner is not having further any alternative remedy in view of arbitration clause.

5. Per contra, Mr. Mrinal Kanti Roy, the learned counsel appearing on behalf of the respondent Jharkhand Urja Vikas Nigam Limited (JUVNL), submits that the order dated 22.11.2017 passed in Miscellaneous Case No.16 of 2011 was on the petition of the JUVNL/ JSEB. He further submits that now the Government of India, Ministry of Law and Justice, Department of Legal Affairs has come out with Office Memorandum with regard to settlement of disputes by way of invoking administrative mechanism for resolution of disputes (AMRD by Memorandum Dated 31.3.2020. He submits that in view of this administrative mechanism for resolution of disputes (AMRD) it is applicable to the petitioner as well as the respondent JUVNL and the matter can be resolved by way of raising the dispute before the Administrative Mechanism for Resolution of Disputes (AMRD). He submits that based on said office memorandum the Hon'ble Delhi High Court in the case of ***Prasar Bharti v. National Brain Research Centre and Another*** in ***O.M.P.(T)(Comm) No.88 of 2021*** has been pleased to direct to invoke the said AMRCD provision. He further submits that the permanent machinery of arbitration has been replaced by this AMRCD. He further submits that earlier on the direction of Hon'ble Supreme Court, the dispute arising out of two of the Government Departments was made in case of "***Oil and Nature Gas Commission v. C.C.E", 1995 Supp.(4) SC 541.*** He submits that the said order was reversed by the Larger Bench in the case of "***Electronic Corporation of India v. Union of India," (2011) 3 SCC 404*** and now the case relied by the petitioner in "***Northern Coalfields Limited" (supra)*** has been referred to the Larger Bench by the Hon'ble Supreme Court by order dated 28.08.2017 in the case of "***N.T.P.C. Kahalgaon Supre Thermal Power Station v. Hindustan Steel Works Construction Limited" [Civil Appeal No.11122 of 2017 (Arising out of S.L.P. (C) No.20724 of 2017)]*** by order dated 28.08.2017. He submits that all these orders have been brought on record by way of filing supplementary counter affidavit. He

submits that Hon'ble Delhi High in the case of ***"Delhi Development Authority v. Electronic Corporation of India Limited (ECIL)", 2019 SCC Online Del.6616*** has adjourned the matter *sine die* awaiting the order of Larger Bench. He submits that in view of this development, this matter may be adjourned *sine die*. He further submits that arbitration clause is not there, which is disputed and in view of that also, this Court may not refer the matter to any sole-arbitrator. He further submits that in the case of "***State of Haryana and Others v. G.D. Goenka Tourism Corporation Limited and Another", (2018) 3 SCC 585*** arising out of section 24 of the Right to Fair Compensation and Transparency Land Acquisition, Rehabilitation and Settlement Act, 2013, a request is made by the Hon'ble Supreme Court to all the High Courts not to deal with any case relating to the interpretation of and concerning to section 24 of Right to Fair Compensation and Transparency Land Acquisition, Rehabilitation and Settlement Act, 2013. By relying on this, he submits that this Court may not pass any order at present and adjourn the matter *sine die.*

6. In view of argument of learned counsels appearing on behalf of the petitioner as well as the respondent-JUVNL, the Court has to consider as to whether if the dispute is there, any party can be made to be remediless and if the law which still holds the field as referred to the Larger Bench by the Hon'ble Supreme Court, the High Court can pass the appropriate order or not?

7. Admittedly, the petitioner is a Government of India Undertaking. Pursuant to the tender notice by the respondent JUVNL, the petitioner has applied for the same and being found as lowest bidder, the work was provided to the petitioners by way of entering 10 agreements. Initially the draft was prepared and in course of examining the draft, it was found that the dispute resolution is not there, the letter was sent by the petitioner to the competent authority of the JUVNL for inserting the arbitration clause and thereafter the agreement has been signed in between the parties. The agreement signed

between the parties has been brought on record by way of filing rejoinder to the counter affidavit by the petitioner in the said agreement, Articles 9, 10 and 11 speaks as under:

> **"*Article :-9*.**
>
> *The following documents shall form integral part of the contract:-*
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> | | | |
> |---|---|---|
> | *I.* | *Schedule-I :-* | *Price Schedule* |
> | *II.* | *Schedule-II :-* | *Commercial Terms and Conditions* |
> | *III.* | *Schedule-III :-* | *General Condition* |
> | *IV.* | *Schedule-IV :-* | *List of Villages to be electrified* |
> | *V.* | *Schedule-V :-* | *Technical Specification* |
> | *VI.* | *Schedule-VI :-* | *Order No.261 M (R.E) dated 31.12.2003* |
> | *VII.* | *Schedule-VII :-* | *Amendment in work order vide letter no.32 M (R.E) dated 24.01.2004.* |
> | *VIII.* | *Schedule-VIII:-* | *Receiving of PSC Poles vide letter no.53/m (i)(RE) dated 06.02.04 and Submission of Bar-Chart vide letter no.RITES/RNC/ JSEB/RE/93 dt. 03.02.2004 (ii)Submission of Bar-Chart vide letter No.RITES/RNC/JSEB/RE/93 dt. 03.02.2004 (iii)Letter No.RITES/RNC/JSEB/RE/129 Dt.16.02.04 consisting of Arbitration Clause, proforma for MRC (for other Than PSC Poles), JMC & Handling over/ Taking over and schedule of recovery of mobilization advance.* |
>
> ***Article :10*.**
>
> *The various documents listed in the Article no.9 and forming an integral part of the contract are to be taken as mutually explanatory to each other. However, in case of conflict between stipulation of one documents and another the more stringent stipulation shall prevail.*
>
> ***Article:11.***
>
> *Dispute arising out of the contract if any will be subject to the jurisdiction of court located at Ranchi only."*

8. Looking into the above Articles, particularly, Schedule-8(iii), it is crystal clear that arbitration clause is there. Thus, prima facie, it is not in

dispute that the arbitration clause is not there and further the said objection was also taken by the respondent-JUVNL before the sole-arbitrator under the permanent machinery which was answered in affirmative, the appellate authority has also affirmed it. Thus, prima facie, the arbitration clause is there. However, this aspect can again be reconsidered by any new Arbitrator if the matter is sent to decide the same afresh.

9. The Court finds that so far as the Office Memorandum Dated 31.03.2020 of Government of India is concerned with regard to administrative mechanism for resolution of disputes, it is meant for the Government of India controlled Department's statutory bodies and 'Applicability clause' of the same speaks as under:

> ***Applicability***
>
> *A.M.R.D. shall apply to any/ all dispute(s), other than those related to taxation, between Central Government Ministries/ Departments inter se and between Central Government Ministries/ Departments and other Ministries/ Departments/ Organization(s)/ Subordinate/ Attached Offices/ Autonomous and Statutory Bodies, etc., under their administrative supervision/ control.*

10. Further, the copy of the said memorandum was forwarded to all the Government of India Authorities including the Secretaries. This was not forwarded to any of the statutory bodies of any other State which clearly speaks of that the MDR was meant for dispute between the Government of India Ministries, Departments, Autonomous and Statutory Bodies.

11. In the case before Hon'ble Delhi High Court in ***Prasar Bharti v. National Brain Research Centre and Another*** in ***O.M.P.(T)(Comm) No.88 of 2021*** the dispute was between Prasar Bharti and National Brain Research Centre and Another and in that case Arbitrator was already appointed under section 11(6) of the Arbitration and Conciliation Act, 1996 and both the companies were Government of India statutory bodies and in light of that AMRD was considered. In the case in hand, the petitioner is the

Government of India Undertaking whereas the respondent-JUVNL is Government of Jharkhand statutory body. In view of that, the judgment relied by Mr. Roy, the learned counsel for the respondent-JUVNL in the case of ***Prasar Bharti v. National Brain Research Centre and Another*** in ***O.M.P.(T)(Comm) No.88 of 2021*** is otherwise.

12. In the case of "***State of Haryana and Others" (supra),*** relied by Mr.Roy, the learned counsel for the respondent JUVNL was made by the Hon'ble Supreme Court not to deal with any case relating to the interpretation of or concerning to section 24 of Right to Fair Compensation and Transparency Land Acquisition, Rehabilitation and Settlement Act, 2013. In that case specific request has been made by Hon'ble Supreme Court not to deal with the subject matter arising out of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013. This Court is not dealing with the said Act. Thus, that judgment is not coming in the way to decide the present case on its own merit. So far as the case of "***Northern Coalfields Limited"(supra)*** is concerned, that has been referred to Larger Bench by the Hon'ble Supreme Court. However, there is no decision yet from the Larger Bench and until the principle laid down in the said, "***Norther Coalfields Limited"(supra)*** is over-ruled by the Larger Bench, the Court is required to be guided by the same judgment of the Hon'ble Supreme Court which still holds the field. Recently the Hon'ble Supreme Court has considered referring of the matter to the Larger Bench in the case of "***Sushil Kumar Pandey and Others v. The High Court of Jharkhand and Another" [W.P.(C) No.753 of 2023]*** wherein at paragraph nos.16 and 19, it has been held as under:

> *"16. The same view has later been taken by a Coordinate Bench of this Court in the case of Hemani Malhotra -vs- High Court of Delhi [(2008) 7 SCC 11]. In a later decision, Tej Prakash Pathak & Ors. -vs- Rajasthan High Court and Others [(2013) 4 SCC 540], a three Judge Bench of this Court expressed a view which is different from that taken in the case of K. Manjusree (supra) and*

referred the matter to the Hon'ble the Chief Justice of India for being considered by a larger Bench. There is no decision yet from a larger Bench and until the principle laid down in the case of K. Manjusree (supra) is overruled by a larger Bench, we shall continue to be guided by the same as "no change in the rule midway" dictum has become an integral part of the service jurisprudence.

19. In these two writ petitions, we are not, however, only concerned with the "midway change of the Rule" Principle. But on that count also, the ratio of the decisions cited by Mr. Gupta are 21 distinguishable. The three Judge Bench in Tej Prakash Pathak (supra) had referred to the judgment in the case of Subhas Chandra Marwaha (supra) to express doubt over correctness of the judgment in the case of K. Manjusree (supra). As we have already observed, the ratio of K. Manjusree (supra) still holds the field. In the case of Ram Sharan Maurya (supra), the Rules guiding recruitment empowered the Government to stipulate qualifying marks of the particular selection process to be such minimum marks as may be determined from time to time by the Government. In this decision, the judgment itself takes note of the decisions of this Court in K. Manjusree (supra) and Hemani Malhotra (supra) and finds that the course for selection to the posts involved in that case was different from that which was found to be impermissible in K. Manjusree (supra) and Hemani Malhotra (supra)."

13. Further this aspect was considered by the Hon'ble Supreme Court in the case of ***"Union Territory of Ladakh and Others v. Jammu and Kashmir National Conference and Another", (2023) SCC Online SC 1140*** wherein at paragraph nos.32 and 35 it has been held as under:

*"**32.** The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore status quo ante are not in the realm of any doubt. The relief(s) granted in the lead opinion by Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges,*

in Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1 is enough on this aspect. We know full well that a 5-Judge Bench in Subhash Desai v. Principal Secretary, Governor of Maharashtra, 2023 SCC OnLine SC 607 has referred Nabam Rebia (supra) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back status quo ante. That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608, a 2-Judge Bench said:

*"**15.** Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention." (emphasis supplied)*

***35.** We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the*

case before it."

14. In the aforesaid judgment, the Hon'ble Supreme Court has criticized the High Courts not deciding the cases on the ground that the leading judgment of the Hon'ble Supreme Court on the subject either referred to the Larger Bench on a review petition relating thereto is pending. It has been further held in that that the High Court are required to decide the cases on the existing law and not to defer it awaiting the judgment of the Larger Bench. The Court finds that case of "***Northern Coalfields Limited"(supra)*** still holds the field. In view of that, this Court is required to pass appropriate order in the facts and circumstances of the present case.

15. Before the Hon'ble Delhi High Court, in the case of "***Delhi Development Authority"(supra)*** relied by the learned counsel for the respondent-JUVNL, the dispute was between the Delhi Development Authority and Electronics Corporation of India Limited and both were under the Central Government and in that aspect the Delhi High Court has adjourned the matter awaiting the order of the Larger Bench in the Reference. In view of the above two judgments of Hon'ble Supreme Court in the case of "***Sushil Kumar Pandey and Others"*** and "***Union Territory of Ladakh and Others" (supra)*** and Delhi High Court judgment in ***Delhi Development Authority (supra)*** are not helping the respondent JUVNL.

16. It is an admitted position that pursuant to permanent machinery of arbitration, the dispute first taken is tried to be resolved, however, the same has not attained finality as under the permanent machinery of arbitration, the Arbitration Act, 1940 as well as the Arbitration and Conciliation Act, 1996 were made outside the purview of the dispute under the permanent machinery of arbitration and the relevant paragraphs of the said judgment as already been quoted hereinabove, wherein it has been held by the Hon'ble Supreme Court considering the entire aspect of the matter arising out of the permanent machinery of arbitration and the effect has been summarized in paragraph nos. 23 to 23.8 (supra). In paragraph no.26 of the said judgment, remand the

matter to the Hon'ble Supreme Court as well as the arbitration was considered. In paragraph no.27 of the said judgment, it was held that right of the appellant to demand such an adjudication cannot be denied simply because it happens to be Government owned company or even the appellant is a Government company. In view of the above and finding the facts of the present case, the Court finds that the case of the petitioner is fully covered in light of the judgment of the Hon'ble Supreme Court in the case of ***"Northern Coalfields Limited"(supra)*** and there will be no difficulty in having all the claims and the counter claims of the petitioner as well as the respondent JUVNL referred to for adjudication afresh in accordance with law to the sole-Arbitrator to be nominated by this Court. Since the matter is being sent to the sole-Arbitrator for a fresh round of arbitration, safely it can be under the Arbitration and Conciliation Act, 1996.

17. As such, this writ petition is allowed.

18. Hence, this Court directs that all disputes relating to and arising out of the contract executed between the petitioner and the respondent-JUVNL including all agreements which are the subject matter of the present writ petition, including the arbitration clause shall, hereby, stand referred to Hon'ble Mr. Justice Vineet Saran, a retired Judge of the Hon'ble Supreme Court to adjudicate upon all the claims and counter-claims which the party may chose to file before him. The Arbitrator shall be free to determine his own fee.

19. Accordingly, let a copy of this order be communicated to Hon'ble Mr. Justice Vineet Saran, a retired Judge of the Hon'ble Supreme Court.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, at Ranchi,
Dated: 16th February, 2024.
A F R /SI,