

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 1570 of 2025

with
CAN 1 of 2026

**Coal India Limited
vs.
Orissa Explosive & Ors.**

For the Appellant : Mr. Debnath Ghosh, Sr. Adv.,
Mr. Sajosij Dasgupta, Adv.
Ms. Akansha Mukherjee, Adv.
Mr. Nilankan Banerjee, Adv.
Mr. Pradipta Bose, Adv.
Ms. Subesha Banerjee, Adv.
Mr. A. Das, Adv.

For the Respondents : Mr. Subir Sanyal, Sr. Adv.,
Mr. Chittapriya Ghosh, Adv.
Ms. Aiswarjya Gupta, Adv.
Ms. Priyanka Saha, Adv.
Mr. Sourojit Mukherjee, Adv.

Judgment reserved on : **28.09.2026**

Judgment pronounced on : **06.10.2026**

Judgment uploaded on : **06.10.2026**

Shampa Sarkar, J.

1. The appeal arises out of an order dated May 19, 2025 passed in WPA No. 12688 of 2017. The learned Judge did not find any justification in the action taken by the appellant in compelling the writ petitioner/respondent No. 1, to accept the reduced rates in terms of the communication dated

March 31, 2017 issued by the Chief Manager (MM) Coal India Limited. The learned Single Judge allowed the writ petition filed by the respondents and directed the appellant herein to release the payment for the goods supplied by the appellant at the rate agreed upon in the Running Contract (R.C) dated 30th March, 2015 and also to release any other amount including the bank guarantee held by the appellant, within a period of twelve weeks from the date of receipt of the said impugned order.

2. The dispute arose out of a communication dated March 31, 2017 issued by the Chief Manager (Material Management Division) of the appellant, thereby, invoking a price fall clause against a Running Contract (R.C) No. CIL/C2D/Cartridge Expl & Accy/2015-17/Orissa/5099 dated March 30, 2015.

3. The appellant entered into a running contract with the writ petitioner for supply of cartridge, explosives and accessories under certain terms and conditions mentioned therein. The duration of the contract was valid from April 15 to March 31, 2017. Clause 2 of the said contract classified the items in terms of the description, quantity, unit price and subsidiary allocation which were mentioned at Annexure I of the contract. The same is quoted below :-

**“02. Item description, quantity, unit price & subsidiary allocation
– As per Annexure – 1.**

The RC items, quantity for 2 years and unit prices are mentioned at Annexure- ‘I’. The year wise RC qty. for each item shall be indicated separately. The monthly allocation will be placed by the respective subsidiary companies and NEC individually within their share of RC qty as indicated at Annexure-1. Suppliers would be strictly governed by the actual requirement of the collieries and as per the allocation/order to be placed by the subsidiary companies and NEC in every month against their specific approved indents only.”

4. After entering into the contract, the writ petitioner regularly supplied the explosives and accessories. There was no complaint with regard to the supply of materials. The dispute arose when the writ petitioner received a communication dated November 30, 2016 from the General Manager (MM)-HOD, Coal India Limited. By the said communication, the writ petitioner was informed that some other companies namely, M/s. Industrial Explosives Limited (hereinafter referred to as Ideal), M/s. IDL Explosives Limited (hereinafter referred to as IDL) and M/s. Regenesi Industries Pvt. Ltd. (hereinafter referred to as Regenesi) having similar RCs for supply of the same product had existing work orders from Singareni Collieries Companies Limited (in short SCCL) for supply of LD Explosives (CAP sensitive/Booster) and LD Explosives (Non CAP sensitive/Column) for the period between May 2, 2016 and May 1, 2018, at a lower price than the rate at which the writ petitioner was supplying to the subsidiaries of the appellant. It was clarified in the said letter that the price fall clause shall be invoked against the said firms. By a letter dated December 19, 2016, the writ petitioner categorically expressed unwillingness to supply at the rate at which SCCL was being supplied. The appellant remained silent. Thereafter, by a communication dated March 27, 2017 the appellant extended the running contract for a month at the existing rate. By the communication dated March 31, 2017, on the last day when the period of supply ended, the appellant invoked the price fall clause and informed the writ petitioner that the price of the explosives that were supplied stood amended. The writ petitioner by a letter dated April 4, 2017 raised a dispute with regard to invocation of the price fall clause.

5. As the appellant remained silent on the issue, the writ petition was moved, inter alia, for following reliefs :-

“a. a writ in the nature of Mandamus directing the respondent authorities and their men and/or agents and /or servants and/or assignee and each of them specifically the respondent Nos. 2 to 4 to cancel and/or set aside impugned communications being Ref Nos. CIL/C2D/LDC Explosives & Accessories/2016-2017/1749 dated 31.03.2017 forthwith;

b. A writ in the nature of Mandamus directing the respondent authorities and their men and/or agents and/or servants and/or assignee and each of them specifically the respondent Nos. 2 to 4 to release the price of LD explosives (CAP sensitive/Booster) and L.D Explosive (Non CAP Sensitive/ column) as per Running Contract dated 30.03.2015 in favour of the petitioner;

c. A writ in the nature of Certiorari commanding the respondents to transmit and produce the entire original records before this Hon’ble Court so that conscionable justice may be administered by quashing the impugned action and by granting other relief as prayed hereinabove;

d. A writ in the nature of Prohibition prohibiting the respondents from giving effect and/or further effect to the impugned communications being Ref No. CIL/C2D/LDC Explosives & Accessories/2016-2017/1749 dated 31.03.2017;

e. Rule NISI in terms of prayers (a) to (d) above;

f. Ad-interim order do issue directing the respondent authorities and their men and/or agents and/or servants and/or assignee and each of them not to give effect and/or further effects to the impugned communications being Ref No. CIL/C2D/LDC Explosives & Accessories/2016-2017/1749 dated 31.03.2017 pending hearing of the instant writ petition;

g. Costs;

h. And/or to pass such further order or orders, direction and/or directions as Your Lordship may deem fit and proper.”

6. Mr. Debnath Ghosh, learned senior Advocate for the appellant submitted that the learned Judge had exceeded his jurisdiction in passing the order impugned, inasmuch as, the interpretation of the terms and conditions of the contract was beyond the scope of judicial review. His Lordship foreclosed all opportunities for the appellant to take steps against

the contractor / writ petitioner by claiming damages for breach of the contractual terms, i.e., the price fall clause.

7. According to Mr. Ghosh, by a communication dated November 30, 2016 the Chief Manager (MM)-HOD informed the appellant that Ideal, IDL and Regenesiis had accepted three orders from SCCL for supply of LD Explosives for the period from May 2, 2016 to May 1, 2018 at lower rates than that at which the writ petitioner was supplying to the appellant. The writ petitioner was informed that the price fall clause would be invoked in respect of those suppliers.

8. The price fall clause clearly provided that, in case price of a product was reduced for any supplier due to invocation of the said clause or for any other reason, the same lower price would also be applicable for other suppliers who were having parallel RCs for that item. If any supplier did not accept the lower price, the appellant would have the right to delete the item from the scope of the RC and procure explosives from other existing suppliers. As soon as it came to the notice of the appellant that SCCL was being supplied the same item i.e. LD Explosives (CAP sensitive/Booster) and LD Explosives (Non CAP sensitive/Column) by Ideal, IDL and Regenesiis at a lower rate, the appellant invoked the price fall clause in respect of the items supplied by the writ petitioner. As the writ petitioner refused to reduce the price, but continued to supply at the original rate, the said refusal amounted to breach of the price fall clause, which entitled the appellant to recover the differential amount from the money due and payable to the writ petitioner for the supply of goods relating to the subject tender. A writ court

could not restrict the appellant from invoking the clauses of the RC or the tender document.

9. It was further submitted by Mr. Ghosh that, in effect, the learned Single Judge had passed a money decree without appreciating that disputed questions of fact could not be adjudicated by a writ court. Moreover, the steps that the appellant could take under the terms and conditions of the said tender, namely, claiming agreed liquidated damages, cancellation of the subject order, imposition of penalty, forfeiture of the security deposit etc. had been foreclosed by the learned Single Judge, by the order impugned. Tender conditions, breach thereof and/or implementation thereof could not be the subject matter of a writ petition. The writ court did not enjoy any authority under the law to direct payment of a disputed money claim. Mr. Ghosh justified the deduction of the amount payable to the writ petitioner by submitting that, the differential amount was required to be recovered from the payment due. The goods had been supplied. Thus, the appellant could not have deleted the item from the RC. Whether such action of the appellant was justified or not, would depend upon an interpretation of the tender conditions, which was beyond the scope of the writ court.

10. Reliance was placed on the decision of the Hon'ble Apex Court in the matter of ***M.P. Power Management Company Limited, Jabalpur vs. Sky Power Southeast Solar India Private Limited and Ors.*** reported in ***(2023) 2 SCC 703***, to support the contention that, in the event disputed questions of fact were involved, which were complex in nature and required assessment of oral evidence, the writ court should loathe to interfere with an administrative decision of the authority. Money claims, per se, particularly

those arising out of contractual obligations were normally not to be entertained, except in very exceptional circumstances. Matters relating to contracts entered into by public authorities with private parties fell within the domain of commercial transactions. The writ jurisdiction could not be invoked to facilitate a breach of contractual obligations by any private party, even if the contract was with a State authority. When a breach of contract was complained of, the party complaining of such breach could sue for specific performance of the contract. In other words, the writ petitioner had a remedy before a civil court to challenge the action of the appellant. The executive action was supported by the terms and conditions of the contract. The writ petitioner could not substantiate before His Lordship that the appellant had acted in an arbitrary, discriminatory or unfair manner. A writ court could exercise jurisdiction over the decision of a tendering authority only to uphold public good or public interest. In the present case, public law element was missing, as the action complained of only affected the writ petitioner.

11. The next decision relied upon by Mr. Ghosh was ***Coal India Limited vs. Prakash Roadlines Corporation & Ors.*** reported in ***2009 SCC OnLine Cal 685***, in support of the contention that questions with regard to interpretation of the terms of the agreement should not be withdrawn from the jurisdiction of a domestic forum, by filing an application under Article 226 of the Constitution of India.

12. ***Kerala State electricity Board and Another vs. Kurien E. Kalathil and Others*** reported in ***(2000) 6 SCC 293*** was relied upon to substantiate the contention that interpretation and implementation of a clause in the

contract, could not be the subject matter of a writ petition. Whether the price fall clause would be attracted in the given case or not, was a question relating to construction of the clauses in the contract and as such, the learned Court could not have passed orders by misinterpreting the price fall clause.

13. ***Punjab National Bank and Others vs. Atmanand Singh and Others*** reported in **(2020) 6 SCC 256** was the next authority relied upon by Mr. Ghosh to reiterate his contention that, High Courts should not entertain writ petitions, but relegate the parties to the remedy of a civil suit, if disputed questions of fact arose and resolution thereof would involve appreciation of evidence.

14. Further reference was made to the ***Eastern Coal Fields Limited and Another vs. UCC-RLA-STA (JV) and Others*** reported in **2024 SCC OnLine Cal 8843** in support of the contention that, a prayer in the writ petition restraining the Government from deducting a particular amount from the bill of the writ petitioner, could not be considered in exercise of power under Article 226 of the Constitution of India. He referred to Sections 45 and 55 of the Sale of Goods Act, 1930 to contend that the dispute related to goods sold and delivered.

15. Learned Senior Advocate submitted that, the dispute between the appellant and the writ petitioner was a dispute within the meaning of Section 2(c)(xii)(a) of the Commercial Courts Act, 2015. Therefore, the writ petition was not maintainable.

16. Mr. Subir Sanyal, learned Senior Advocate appearing for the writ petitioner submitted that the price fall clause was not applicable in the facts

of the case. He referred to the notice inviting tender and the terms and conditions of the RC and submitted that, only if suppliers having parallel RCs against the subject tender were supplying similar item to Coal India Limited or its subsidiaries at a lower rate, the price fall clause could be invoked. SCCL was not one of the subsidiaries of Coal India. The appellant was not supplying to SCCL. Supply by Ideal, IDL and Regenesys to SCCL, of a similar item at a lower price was not relevant and could not be imported into the RC of the writ petitioner. The appellant had failed to prove that Ideal and IDL etc. had a parallel RC against the same tender in respect of which the appellant was the successful bidder. Moreover, by a letter dated December 19, 2016, the writ petitioner had informed the General Manager (MM)-HOD, Coal India Ltd. that they were not going to supply explosives at the rate at which SCCL was being supplied. That the writ petitioner would supply the explosives as per the rates as originally agreed upon with the appellant. The question of accepting the price at which SCCL was procuring the explosives, from other suppliers did not arise. The said letter was issued in response to the communication dated November 30, 2016. It was further submitted that, after the said letter was issued to the appellant, supplies were made until March 2017 at the rate originally agreed upon and the supplies were accepted. Coal India also proposed extension of the validity of the RC for a further period of one month by a communication of March 27, 2017. There was no response to the letter dated December 19, 2016. Suddenly, by a letter dated March 31, 2017 the Chief Manager (MM) informed the writ petitioner that, in view of the price fall clause i.e. clause

7.2 of the RC, the price of SCCL which was applicable to other RC holders, would also be applicable to the writ petitioner.

17. Aggrieved, the writ petitioner approached the court under Article 226 of the Constitution of India by challenging the arbitrariness in the actions of the appellant. The writ petitioner prayed for quashing of the communication dated March 31, 2017 and for further direction upon the appellant to release the price of the materials supplied as per the RC dated March 30, 2015. Mr. Sanyal relied on the decision of ***ABL International Ltd. and Another vs. Export Credit Guarantee Corporation of India Ltd. and Others*** reported in ***(2004) 3 SCC 553*** and ***Bharat Petroleum Corpn. Ltd vs. Great Eastern Shipping co. Ltd.*** reported in ***AIR 2008 Supreme Court 357***.

18. Considered the submissions of the parties.

19. The price fall clause which was sought to be invoked by the appellant, as mentioned in the RC dated March 30, 2015, is quoted below :-

“07. Price Fall Clause

7.1 Price fall clause: As per enclosed Pre Contract Integrity Pact clause No. 7.

7.2 In case the price of a product is reduced for any supplier due to invocation of “price fall clause” or any other reason, the same lower price shall also be applicable for the other suppliers who are having parallel RCs for that item. If any supplier does not accept the lower price, CIL shall have the right to delete the item from the scope of Rc of such firm and procure explosives/accessories from other existing supplier/Reserve RC holders.”

20. The clause provides that, if the price of a product was reduced for any supplier due to invocation of “price fall clause” or for any other reason, the same lower price would be applicable for other suppliers who were having parallel RCs for that item. If supplier did not accept the lower price, the

appellant would have the right to delete the item from the scope of the RC and procure the same from other existing suppliers. It is pertinent to mention that Ideal, IDL and Regenesi did not have a parallel RC with Coal India or its subsidiaries for the said item. The records do not reveal whether the said clause was invoked or not.

21. The letter dated November 30, 2016 included a table illustrating the difference in destination price. The relevant portion of the letter is quoted below :-

“It has come to our knowledge that M/s Ideal Industrial Explosives Limited, M/s IDL Explosives Limited, Hyderabad, Secunderabad and M/s Regenesi Industries Pvt Ltd, Secunderabad have accepted firm order vide Nos. No. 7600006388 dated 02.05.2016, 7600006389 dated 02.05.2016 and No. 7600006390 dated 02.05.2016 respectively from Singareni Collieries Company Limited (SCCL) for supply of LD Explosives (CAP sensitive/Booster) and LD Explosives (Non CAP sensitive/Column) to SCCL for a period from 02.05.2016 to 01.05.2018 at the prices lower than the prices at which they are supplying to CIL against CIL’s RC with them. The comparison of prices are as under :-

Item Name	FOR Destination Price (excluding taxes & duties) applicable against CIL’s RC for the quarter from 01.04.2016 to 30.06.2016 (Rs/MT)	FOR Destination Price (excluding taxes & duties) applicable against SCCL’s order for the period from 02.05.2016 to 30.06.2016 (Rs/MT)
LD Explosives (CAP sensitive/ Booster)	33,492/-	30,000/-
LD Explosives (Non CAP sensitive/ Column)	28,581/-	27,500/-

We would like to inform you that as per the terms of the clause – 7.1 of the CIL’s RC dated 30.03.2015, Price Fall Clause will be invoked against above mentioned three firms for the above items.”

22. The relevant portion of the communication dated March 31, 2017 is quoted below :-

“Through our notice dated 30.11.2016 referred at Sl No. 2 above, you were informed that M/s Ideal Industrial Explosives Limited, Secunderabad, M/s IDL Explosives Limited, Hyderabad, and M/s Regenesi Industries Pvt Ltd, Secunderabad have accepted firm Order Nos. 7600006388, 7600006389 and 7600006390 [all dated 02.05.2016] respectively from Singareni Collieries Company Limited (SCCL) for supply of LD Explosives (CAP sensitive/Booster) and LD Explosives (Non CAP sensitive/Coloumn) to SCCL for a period from 02.05.2016 to 01.05.2018 at the prices lower than the prices at which they are supplying to CIL against CIL’s RCs with them.

Vide the said notice, you were also informed that as per the terms of the clause – 7.1 of the CIL’s RC dated 30.03.2015, Price Fall Clause will be invoked against above mentioned three firm s for the above items and you being the parallel RC holder having same prices for the above items, the clause – 7.2 of the CIL’s RC dated 30.03.2015 would be applicable in your case.

You were given 2 weeks’ notice from the date of issue of our above said notice for implementation of the Price Fall Clause as per terms of the CIL’s RC dated 30.03.2015.

We have received your reply vide your letter dated 19.12.2016 [referred at sl no. 3 above] informing that you are not supplying LD Explosives to SCCL, and at the same time disagreed to supply LD Explosives to CIL at SCCL’s price in future.

However, this is inform you that you have accepted the Price Fall clause of the NIT while submitting your offer against the tender no. 246 dated 30.12.2014 against which the RC indicated at sl no. 1 above was concluded. Also, you are supplying LD Explosives to different sub cos. Even after the issue of CIL’s Notice indicated at sl no. 2 above.

In view of the above, Price Fall Clause i.e. Clause No. 7.2 of our above referred RC is hereby invoked so as to make the lower prices of SCCL for other RC holders applicable to you also.”

23. The letter dated March 31, 2017 which included a table of amended price is quoted below :-

“Accordingly, the prices of LD Explosives (CAP sensitive/Booster) and LD Explosives (Non CAP sensitive/Coloumn) of the RC stand amended as under for the period applicable thereto:-

LD explosives (CAP Sensitive/ Booster)	30,00 0.00	28,82 1.15	29,94 5.75	29,94 5.75	Will be as applicable in SCCL during the period
LD Explosives (Non CAP Sensitive/ Column)	27,50 0.00	27,91 5.89	26,41 9.38	27,45 0.27	

The prices applicable for the period from 30.03.17 to 31.03.17 shall be communicated in due course.

All other terms and conditions of our above referred RC shall remain unaltered.”

24. We do not agree with Mr. Ghosh’s submissions that the learned Judge had misinterpreted the clause of the contract. A bare perusal of the said clause would clearly indicate that the price fall clause does not apply to the facts in hand. Moreover, by invoking the price fall clause, the appellant could delete the item from the scope of the RC of the supplier, but could not deduct the differential amount from the bills of the supplier or forfeit the security deposit. The language of the price fall clause is unambiguous and does not give rise to any complication. Factual situation herein does require any adjudication upon appreciation of either oral or documentary evidence. We find that the RC of the writ petitioner was operating in respect of Coal India Limited and its eight subsidiaries, namely :-

- a. Eastern Coalfields Ltd., Sanctoria
- b. Bharat Coking Coal Ltd., Dhanbad
- c. Central Coalfields Ltd., Ranchi
- d. Western Coalfields Ltd., Nagpur
- e. South Eastern Coalfields Ltd., Bilaspur

f. Mahanadi Coalfields Ltd., Sambalpur

g. Northern Coalfields Ltd., Singrauli

h. North Eastern Coalfields Ltd., Assam.

25. We also find it relevant to record that, even after the writ petitioner refused to accept the rate at which the items were supplied to SCCL and decided to supply at the rates fixed, the appellant continued to accept the supply at the existing rate or agreed rate, which in turn indicates that the contention of the writ petitioner in the letter dated December 19, 2016 had been accepted by the appellant. His Lordship has rightly appreciated the facts of the case and the issue involved.

26. By a communication dated March 27, 2017 the General Manager (MM)- HOD proposed to extend the validity of the RC provisionally for a period of one month at the existing terms and conditions. The writ petitioner was requested to confirm acceptance of the proposal by a mail, positively by the same day. The rates were proposed to be finalized either at the existing rate or at the rates against Tender No. 293 dated February 14, 2017. This letter demonstrates that the writ petitioner's refusal to supply at the rates at which SCCL was being supplied the item was accepted by the appellant.

27. The price fall clause in the tender notice dated February 14, 2017 is quoted below :-

“12 Price Fall clause

12.1 Price Fall Clause : As per Pre Contract Integrity Pact Clause No. 7 which reads as under;

“The BIDDER undertakes that it has not supplied/is not supplying similar product/systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found any stage that similar product/systems or sub systems was supplied by the BIDDER to any other Ministry/Department of the Government of India or a PSU

at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the different is the cost would be refunded by the BIDDER to the BUYER, if the contract has already been concluded.

12.2 In case the price of a product is reduced for any supplier due to invocation of 'Price Fall clause' or any other reason, the same lower price shall also be applicable for the other suppliers who are having parallel RCs against this tender. If any supplier does not accept the lower price, CIL shall have the right to delete the item from the scope of RC of such firm and procure explosives/ accessories from other existing supplier / Reserve RC holders."

28. It provided that, if the price of a product was reduced for any supplier, due to the invocation of the price fall clause or for any other reason, the same lower price would be applicable for the other suppliers who had parallel RCs, against the said tender: i.e. the Tender No. CIL/C2D/Cart Explo & Accy/2017 - 19/293 dated February 14, 2017. The price fall clause, as rightly appreciated by the learned Single Judge could not be invoked by the appellant as there was nothing on record to demonstrate that Ideal, IDL and Regenesys were supplying the product at a lower price to all or any of the subsidiaries of Coal India in respect of parallel RC arising out of the said tender i.e. Tender No. CIL/C2D/Cant/Explox/Accy/2017-1/23 dated February 14, 2017.

29. We also find that in the notice inviting tender, the price fall clause was as follows:-

"12. Price fall clause

12.1 Price fall clause: As per Pre Contract Integrity Pact clause No. 7.

'price fall clause' or any other reason, the same lower price shall also be applicable for the other suppliers who are having parallel RCs against this tender. If any supplier does not accept the lower price, CIL shall have the right to delete the item from the scope of RC of such firm and procure explosives/accessories from other existing supplier/Reserve RC holders."

30. Whereas, in the letter dated March 30, 2015, which is the R.C, the clause was misquoted, which is as follows :-

“07. Price Fall Clause

7.1 Price fall clause: As per enclosed Pre Contract Integrity Pact clause No. 7.

7.2 In case the price of a product is reduced for any supplier due to invocation of “price fall clause” or any other reason, the same lower price shall also be applicable for the other suppliers who are having parallel RCs for that item. If any supplier does not accept the lower price, CIL shall have the right to delete the item from the scope of RC of such firm and procure explosives/accessories from other existing supplier/Reserve RC holders.”

31. Thus, a conjoint reading of the two clauses, will clearly mean that the clause would be applicable in case similar items were being supplied by entities having similar R.Cs against the subject tender, and not in respect of any tender floated by SCCL which was another public sector undertaking, operating in the lignite sector.

32. In exercise of power of judicial review, a writ court can interfere with the action of a tendering authority in the event of unfairness, arbitrariness and unreasonableness. We find the communication dated March 31, 2017 to be arbitrary, unfair and unreasonable. No serious disputed questions of fact were involved, to understand the impact of the price fall clause. Evidence was not required to be scrutinized. Merely because the appellant interpreted the price fall clause differently, the same would not give rise to a disputed question of fact which could only be adjudicated by a civil court. The writ court rightly went into the plain and simple meaning of the price fall clause as was ex facie available from the clause itself and came to the conclusion that invocation of the clause by the appellant was misplaced. His Lordship rightly took note of the conduct of the appellant in accepting the supply

after the writ petitioner had clearly indicated that they would continue to supply at the originally fixed rate of Coal India and not at SCCL's rate. Unlike private parties, the appellant as a public authority and State under Article 12 of the Constitution of India, was expected to act fairly. Depriving a contractor of its legitimate dues by arbitrarily invoking a clause, militates against the rights guaranteed under Article 14 of the Constitution of India. Unfairness in State's action is contrary to public interest.

33. The relevant portions of His Lordship's order are quoted below :-

"29. Therefore, I am unable to persuade my judicial conscience to accept the contention of Mr. Dutta that the language used in the letter dated 19th December 2016 failed to clearly convey that the author did not agree to accept the reduced rate.

30. However, despite receiving the letter dated 19th December 2016 from the petitioner, the respondents remained silent and did not remove the items from the petitioner's RC. Instead, by a letter dated 27th March 2017, the petitioner was informed that the respondents intended to extend the validity of the RC at the existing rates and on the same terms and conditions. Although the term "provisionally" was used, a plain reading of the letter suggests that the word "provisionally" qualified the term "extend." The letter also categorically stated that the final rate would be either the existing rate or the rate finalized under Tender No. 293 dated 14th February 2017, whichever was lower. Notably, Tender No. 293 was not referred to in the original RC, and as such, reliance on it would amount to a modification of the existing terms of the RC.

31. In the decision of Bharat Petroleum Corporation Ltd. (supra), it was held that an offer is not accepted merely by silence on the part of the offeree; however, this does not imply that acceptance must always be expressed in explicit terms. Under certain circumstances, the offeree's silence, when accompanied by conduct amounting to a positive act, may constitute acceptance—an agreement sub silentio. Therefore, the terms of a contract between the parties may be established not only through their express words but also through their conduct.

32. In the present case, after expressing its disagreement with the price fixed by SCCL, the petitioner ceased supplying goods to CIL. Conversely, despite receiving the letter dated 19th December 2016, the respondents remained silent and did not remove the items from the petitioner's RC. On the contrary, by a subsequent letter dated 17th February 2017, the validity of the RC was extended on the existing terms. Such conduct on the part of the respondents indicates that the principle of sub silentio is clearly applicable in the present case."

34. The contention of Mr. Ghosh that, as the dispute fell within the domain of contractual obligations, the actions should not be judged on the anvil of Article 14 of the Constitution, cannot be accepted. The obligation of the appellant to act fairly, justly and reasonably is an obligation of a public character, which should be fulfilled in every case arising out of contractual obligations.

35. In this context, the following paragraphs of ***ABL International Ltd.*** (supra) are quoted below :-

“52. On the basis of the above conclusion of ours, the question still remains why should we grant the reliefs sought for by the appellants in a writ petition when a suitable efficacious alternate remedy is available by way of a suit. The answer to this question, in our opinion, lies squarely in the decision of this Court in the case of *Shrilekha Vidyarthi* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] wherein this Court held: (SCC pp. 235-37, paras 20-22 & 24)

The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the preamble. Therefore, total exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny

permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, 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 of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of the State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs 16 lakhs. On facts we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when the Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner.

54. Apart from the above reasons given by us to interfere with the judgment of the Appellate Bench of the High Court, we have one other good reason why we should not drive the appellants to a suit. The claim of the appellants was rejected by the respondent in the year 1994. The respondent challenged the basis of rejection by way of a writ petition in the year 1996. The objection as to the maintainability of the petition was rejected by the High Court by its judgment dated 15-5-1997. We are now at the end of the year 2003. We at this distance of time and stage of litigation, do not think it proper to relegate the parties to a suit. To direct the appellants to approach a civil court at this stage would be doing injustice to the appellants. In this view of ours, we are supported by a number of decisions of this Court like in *Shambhu Prasad Agarwal v. Bhola Ram Agarwal* [(2000) 9 SCC 714] wherein this Court though noticed the fact that the appellants had an alternate remedy for issuance of a letter of administration, it refused to dismiss the appeal on the grounds: (SCC p. 715, para 5)

Since considerable time has elapsed, the interest of justice demands that the proceedings should come to an end as early as possible and that the appeal should not be dismissed merely on highly technical ground.

55. In *Bal Krishna Agarwal (Dr) v. State of U.P.* [(1995) 1 SCC 614 : 1995 SCC (L&S) 356 : (1995) 29 ATC 163] this Court held: (SCC p. 618, para 10)

“10. Having regard to the aforesaid facts and circumstances, we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternate remedy under Section 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than 5 years. Since the question that is raised involves a pure question of law and even if the matter is referred to the Chancellor under Section 68 of the Act it is bound to be agitated in the court by the party aggrieved by the order of the Chancellor, we are of the view that this was not a case where the High Court should have non-suited the appellant on the ground of availability of an alternative remedy. We, therefore, propose to go into the merits of the question regarding inter se seniority of the appellant and Respondents 4 and 5. We may, in this context, mention that Respondent 4 has already retired in January 1994.”

36. When the writ petitioner stuck to its original rate and refused to supply at a lower rate, the appellant continued to accept supply at such rate. The following paragraph of ***Bharat Petroleum Corpn. Ltd.*** (supra) is quoted below :-

“19. It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offerees silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance – an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct.”

37. We are of the considered opinion that, the appellant’s communication under challenge demonstrated an act of arbitrary deduction of money payable to the supplier for the goods supplied. The appellant made an attempt to withhold the money due to the appellant by invoking a contractual clause which did not apply. To arrive at such a conclusion, we are not required to go deeper into the inherent and underlying meaning of the said clause, inasmuch as, the clause in its plain and simple language

clearly indicated that the deduction of the money was not justified in the present case.

38. Although, arguments were advanced by the appellant that the appellant had the right to invoke the risk purchase clause as well, there is no instance of purchase of the product from elsewhere and not from the writ petitioner, during subsistence of the R.C. No notice of invocation of the risk purchase clause was ever issued. That was not the case run by the appellant. The risk purchase clause is quoted below :-

“16. Risk Purchase

16.1 In the event of failure of the supplier to deliver or dispatch the stores within the stipulated date/period of the supply order or in the event of breach of any of the terms and conditions mentioned in the supply order, Coal India Ltd, or its subsidiary companies have the right to purchase the stores from elsewhere after due notice to the defaulting supplier at the risk and cost of the defaulting supplier. In the event of failure of the supplier as detailed above, the cost as per risk purchase exercise may be recovered from the bills against any other supplies pending in the same Subsidiary Co. and also in any other subsidiary companies/CIL.

16.2 Risk purchase action may be initiated under any of the following conditions,

- (a) When the supplier fails to deliver the materials even after the delivery period in extended on several occasions, on request from the supplier.
- (b) When the supplier fails to respond to purchaser's request for supply of the materials and fails to provide any reason which is considered to be genuine, for the delay in supply.
- (c) When in the judgment of the purchaser the supplier is unable to execute the order due to various reasons,
- (d) When the materials are urgently required and the supplier fails to deliver the materials within the extended/original delivery schedule.
- (e) When the supplier breaches any of the terms and conditions of the supply order and as a result fails to execute the order satisfactorily.”

39. Accordingly the appeal and connected application are dismissed. The order of His Lordship is upheld and the directions passed under paragraph 36, which is quoted below should be implemented forthwith. However, we extend the period of 12 weeks from the date of the order as stated in the said paragraph, by a further period of six weeks from date.

“**36.** Accordingly, the writ petition is disposed of with a direction to respondent no. 2 to release the payment for the goods supplied by the petitioner at the rate agreed upon in the Running Contract (RC) dated 30th March, 2015, and to also release any other amounts, including the Bank Guarantee held by the respondents, in accordance with the law, within a period of 12 weeks from the date of receipt of a copy of this order.”

40. Urgent Photostat, certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

I Agree.

(Arjun Ray Mukherjee, J.)

(Shampa Sarkar, J.)