HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 16435/2024

M/s N.G. Gadhiya, Proprietorship Concern Through Its Proprietor Shri N.G. Gadhiya, Aged About 45 Years, S/o Shri Ghanshyambhai Gadhiya, Having Registered Office At 22B22, Haldighati Marg, Opposite Nri Colony Gate No. 1, Jagatpura, Jaipur, Rajasthan

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Department Of Finance, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. Commissioner Of State Tax, Government Of Rajasthan, Kar Bhawan, Bhawani Singh Road, C Scheme, Jaipur.
3. Chairman, Rajasthan State Road Development And Construction Corporation Limited, Jaipur, Rajasthan
4. Project Director, Rajasthan State Road Development And Construction Corporation Limited, Unit-Iii, Jaipur-302004, Rajasthan.
5. Chief Engineer And Additional Secretary Of Department Of Public Works Department, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
6. Union Of India, Through The Joint Secretary (Revenue), Ministry Of Finance, Deparment Of Revenue, Room No.46, Norht Block, New Delhi.

----Respondents

For Petitioner(s)	:	Major R.P. Singh, Senior Advocate assisted by Ms. Rituraj Kaur Bhullar
For Respondent(s)	:	Dr.P.C. Jain with Ms. Vinny Jain for respondents No. 3 and 4 Mr. Gaurav Jain with Mr. Srikant Saini, for respondent No.6 Mr. Kuldeep Singh Rathore & Ms. Harshita Sharma for Ms. Mahi Yadav, AAG for respondents No.1,2 and 5

MR. JUSTICE GANESH RAM MEENA

<u>Order</u>

Arguments concluded on :: February 24, 2026
Judgment Reserved on :: February 24, 2026
Judgment pronounced on :: March 25, 2026

<u>REPORTABLE:</u>

1. By filing instant writ petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the letter dated 08.06.2022 (Annex.14) issued by the respondent No.4, whereby the representation of the petitioner for refund of differential amount i.e. 6% GST amount was rejected. The petitioner further prayed to direct the official respondent to refund the differential rate of GST i.e. 6% to the petitioner along-with interest from the date of effective revision of GST rate in compliance of circular dated 02.07.2024 (Annex.17). The petitioner also prayed that if any order prejudicial or detrimental to the interest of the petitioner is passed during the pendency of the writ petition, the same may kindly be taken on record and quashed and set aside.

2. The facts of the case in nutshell are that the Rajasthan State Road Development & Construction Corporation Ltd. (for short 'the RSRDCC') awarded a contract to the petitioner for construction of 'Centre for Excellence for Revenue, Research & Analysis' at Jhalana, opposite Aranya

Bhawan for which a work order was issued to the petitioner-Firm on 25.10.2021 (Annex.10 in the writ petition). The petitioner-Firm completed the work on 10.02.2023. When the work order was issued the GST Rate was 12%, however, during the course of execution of work, it was increased from 12% to 18%. The petitioner-Firm demanded refund of 6% from the date of revision (increase) of GST by giving reference of the order dated 07.01.2021 issued by the Finance Department, Government of Rajasthan but vide letter dated 08.06.2022 the respondent department denied to refund the additional GST paid by the petitioner-Firm referring Clause 45.1 of the Contract Agreement.

3. Major R.P. Singh, Senior Advocate assisted by Ms. Rituraj Kaur Bhullar, appearing for the petitioner-Firm submitted that the inaction on the part of the respondents in not refunding the differential rate of GST, i.e. 6% to the petitioner-firm is not legally sustainable in the eye of law. He also submitted that the rule against arbitrariness action binds the Government, all the Corporations and Bodies acting as instrumentalities and agencies of the Government. As such the respondents being the State and its instrumentality cannot act in an arbitrary and biased manner. Senior Counsel also submitted that Clause 15 of the Conditions of Contract very categorically states that the liability of GST shall be borne by the Contractor, however, the matter of revision in

the GST rate has not been clarified. Therefore, vide order dated 07.01.2021, Clause 36E was inserted after the existing Clause 36D of the Conditions of Contract of Appendix XI in Public Works Financial & Accounts Rules, Part-II, which is in addition to existing Clause 15 and specifically deals with the revision in the contract price on account of a change in the rate of GST. Therefore, the respondents No. 3 and 4 being the principal employer are liable to pay or compensate the additional burden of 6% of GST to the Contractor. Senior Counsel also submitted that in the light of the circular dated 02.07.2024, the petitioner-firm submitted a representation on 05.07.2024 before the respondents authorities but the respondents authorities have not taken any decision on the said representation.

Learned Senior Advocate also submitted that the respondent- RSRDCC is a State as it is a Government Undertaking being run with the funds of the State Government and therefore, all the orders passed or amendments made in the Rules in exercise of the powers conferred upon His Excellency the Governor of Rajasthan, shall also be applicable to and binding upon the respondent-RSRDCC. He also submitted that the provisions of the Rajasthan Transparency Public Procurement Act, 2012 (for short 'the Act of 2012') are applicable in the present case. He also submitted that since the contractors to whom the Public

Works Department has entrusted some contracts are entitled for refund of differential amount of the GST in view of the order dated 07.01.2021, the petitioner who is also a Contractor, is also entitled for the same benefit and the act of the respondents in not extending the said benefit to the petitioner is discriminatory.

To support the submissions, Senior Counsel has placed reliance upon following judgments:-

(i) Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority & Ors., reported in 2023 SCC OnLine SC 95; and

(ii) M/s. Ankita Construction v. The State of Rajasthan & Anr., (S.B. Civil Writ Petition No.19871/2023) decided on 12.07.2024.

4. Mr. Kuldeep Singh Rathore & Ms. Harshita Sharma appearing for Ms. Mahi Yadav, AAG on behalf of respondents No.1,2 and 5 opposed the submissions and submitted in the reply to the writ petition that Clause 36E of Conditions of Contract of Appendix-XI to the said Rules and Circular issued by the respondent No.5 is misplaced as the said rules are not applicable to the respondents No.3 and 4. He submitted that the said rules are meant to regulate execution of works and maintenance of accounts by various public works departments. The term 'department' has been defined in Rule 11(9) to include Public Works Department, Irrigation Department including Irrigation and Multipurpose River Valley Projects, Public Health Engineering Department and Indira

Gandhi Nahar Department. He also submitted that unless the respondent No.4 Corporation, which is a separate and independent legal entity adopts the said Circular by way of a Board Resolution or by following any other procedure prescribed, the said Circular will not apply to the respondent No.4- Corporation.

In support of the submissions, the counsel has placed reliance upon the following judgments:-

(i) Bhawani Industries, GA v. State of Raj. & Anr. (S.B. Civil Writ Petition No.18549/2024), decided on 06.10.2025; and

(ii) Mahadev Stone Crusher v. State of Raj. & Ors. (S.B. Civil Writ Petition No. 17666/2024) decided on 05.12.2024.

5. Dr. P.C. Jain with Ms. Vinny Jain appearing for the respondents No. 3 and 4 while opposing the submissions advanced by the Senior Counsel appearing for the petitioner submitted that in view of existence of Clause 45.1 of the agreement (Annex.R/1 with reply), the request of the petitioner for release of payment of the differential amount of 6% GST from the respondents-Corporation could not be and cannot be accepted. It is submitted by the Senior Counsel appearing for the respondent- RSRDCC that the law of estoppel also come into play as the petitioner- Contractor has also raised the bills as per the term and condition No.45.1 of the Contract Agreement and now after a lapse of time, he cannot claim the refund of alleged differential amount of GST. He also submitted that the RSRDCC is a government owned

company and it is regulated by the provisions of the Companies Act. He also submitted that in the contractual matters, the writ petition is not maintainable.

6. Mr. Gaurav Jain with Mr. Srikant Saini, counsel appearing for the respondent No.6 opposed the submissions advanced by the Senior Counsel appearing for the petitioner and supported the arguments advanced by the counsel appearing for the respondents. He submitted that the respondent No.6 has nothing to submit as no relief has been sought qua the respondent No.6.

7. Considered the submissions advanced by the counsels appearing for the respective parties and gone through the entire material made available to the Court including the judgments relied upon.

8. One of the issue raised by the counsels appearing for the respondents is that as regards the dispute in contractual matters the writ petition is not maintainable. It is also submitted that since the contract agreement provides for a dispute redressal system in Clause 24 of the Contract Agreement / bid document, the petitioner should have approached the Competent Authority.

9. The Hon’ble Apex Court in the case of ***Gas Authority of India Limited v. Indian Petrochemicals Corporation Limited & Others, reported in (2023) 3 SCC 620*** has observed in paras 20, 21 and 29 as under:-

"***20.*** *In our view, the dispute is within the following parameters. First, whether the writ petition filed by IPCL challenging Clauses 4.04 and 10.01 of the contract was maintainable. Second, assuming such a petition was maintainable, whether the High Court could have invalidated the aforementioned clauses on the ground of unequal bargaining power and arbitrariness/unfairness. Third, whether monetary relief in the form of refund could have been granted after the order dated 19-9-2006 [Indian Petrochemicals Corpn. Ltd. v. Union of India, 2006 SCC OnLine Guj 167] was passed.*

21. *Although the dispute arises from a commercial contract, we find that the writ petition challenging the clauses was maintainable. It is not disputed that GAIL is a public sector undertaking and thus qualifies under the definition of "State" as per Article 12 of the Constitution. At the time of entering into contract, GAIL was enjoying a monopolistic position with respect to the supply of natural gas in the country. IPCL, having incurred a significant expense in setting up the appropriate infrastructure, had no choice but to enter into agreement with GAIL. Thus, there was a clear public element involved in the dealings between the parties. Further, writ jurisdiction can be exercised when the State, even in its contractual dealings, fails to exercise a degree of fairness or practises any discrimination. We are fortified in our view by this Court's decision in ABL International [ABL International Ltd. v. Export Credit Guarantee Corpn.*

> *of India Ltd., (2004) 3 SCC 553] and Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728].*
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> ***29.*** *We thus dismiss the appeal(s) qua the aspect of maintainability of the writ petition and the quashing of the clauses dealing with loss of transportation charges in the case of IPCL. However, we deem it fit to restrict the relief to period of three years insofar as refund is concerned from the date of filing of the writ petition i.e. 9-3-2006."*

10. Learned counsels appearing for the respondents have referred the order passed in the case of ***Bhawani Industries (supra),*** wherein the Coordinate Bench of this Court in para 9 has observed as under:-

> "***9.*** *Admittedly, as per the conditions provided for e-auction, acceptance/rejection of the highest bid received in the e-auction was made subject to the approval of High Powered Committee constituted by the State Government, therefore, without approval and acceptance of the bid by the High Powered Committee, no right or interest has been created in favour of the petitioner and as per Clauses 7.13 and 8.2 of e-auction invitation notice, aggrieved party has been given alternative remedies of filing appeals as well as opportunity of arbitration has also been provided under Arbitration and Conciliation Act, 1996. The petitioner without availing any of the aforementioned alternative remedies available to it in accordance with law, has preferred the present writ petition, therefore, the same is not maintainable."*

11. The another case law referred by the learned counsels appearing for the respondents is the order delivered by the Coordinate Bench of this Court in the case of ***Mahadev Stone Crusher (supra)***, wherein the Coordinate Bench of this Court in paras 4,9,10,12 and 13 has observed as under:-

> "***4.*** *Learned counsel for the petitioner submits that according to Section 15 of the Rajasthan Transparency in Public Procurement Act, 2012 (hereinafter referred to as 'the RTPP Act') no price negotiation can be held by a procuring entity with respect to a bid negotiation except as provided in Section 31 or Section 35 of the RTPP Act. He further submits that in the present case the bidding process was a two stage bidding process as provided under Section 32 of the RTPP Act, thus, the case of petitioner does not fall either under Section 31 or Section 35 of the RTPP Act, and therefore, the action of the respondents in calling for negotiation vide letter dated 09.10.2024 (Annex.4), after the financial bid of the petitioner was already accepted, was itself contrary to Section15 of the RTPP Act.*
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> ***9.*** *Learned counsel for the respondents further submits that the argument of the petitioner that the documents, which have been placed on record by way of additional affidavit in pursuance to the order dated 22.11.2024 passed by this court, pertains to a location other than Simalwara is devoid of merit as the Building Schedule Rates ('BSR') are prescribed for the whole district and not for a particular division*

and in the present case BSR of the year 2022were approved for the whole Dungarpur District and the same is applicable to the Simalwara Division as well since the same falls in the Dugarpur District. He further submits that in pursuance to the NIT dated 30.08.2024 (Annex.2) bids for 8tenders were invited and in some of the tenders, bids were recieved as low as @25.01% below the estimated rates for other works of similar nature, therefore, the respondents are justified in rejecting the bid of petitioner and also in issuing fresh NIT in respect of the same in anticipation of a rate which is favourable to the respondents.

10. *The learned counsel for the respondents, while placing reliance upon the judgment passed by this court in* ***Kuldeep Lodhawat v. Rajasthan State Industrial Development and Investment Corporation Ltd. [S.B. Civil Writ Petition no.1423/2021]****, submits that the respondents are well within their right to reject the bid of the petitioner and in issuance of fresh NIT for the same in the interest of public revenue as in a tender arising out of the same NIT dated 30.08.2024 (Annex.2)for a similar nature of work, the bids were received @25.01%. He also submits, while pointing out to Annex.5 (Page no.105), that the respondents has also rejected the bid submitted by Gayatri Infra Projects for one of the tenders which were invited vide NIT dated 30.08.2024 (Annex.2), thus, it is not a case that the respondents are discriminating against the petitioner.*

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12. *This court at the outset finds it appropriate to adjudicate the preliminary objection raised by the learned counsel for the respondents regarding the maintainability of the instant writ petition. This court finds that Section 38 (1) provides for the remedy of Appeal to any bidder or prospective bidder in case he is aggrieved by any decision, action or omission of the procuring entity. Section 38 is reproduces as under:*

> *"**38. Appeals.-** (1) Subject to section 40, if any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of this Act or the rules or guidelines issued thereunder, he may file an appeal to such officer of the procuring entity, as may be designated by it for the purpose, within a period of ten days or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, omission,as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved:*
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> *Provided that after the declaration of a bidder as successful in terms of section 27, the appeal may be filed only by a bidder who has participated in procurement proceedings:*
>
> *Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.*
>
> *(2)...*
> *(3)...*
> *(4)...*
> *(5)...*
> *(6)...*
> *(7)...*
> *(8)...*

(9)...
(10)..."

However, it is clear from the perusal of the opening phrase "Subject to Section 40" as used in Section 38 (1) of the RTPP Act that the provisions of Section 38 are subject to Section 40 of the RTPP Act. Section 40 of the RTPP Act is reproduced as under:

> *"**40. Appeal not to lie in certain cases.-** No appeal under section 38 shall lie against any decision of the procuring entity relating to the following matters, namely:-*
> *(a) determination of need of procurement in terms of section 5;*
> *(b) provisions limiting participation of bidders in the bid process in terms of the provisions of section 6;*
> *(c) <u>the decision of whether or not to enter into negotiations in terms of section 15</u>;*
> *(d) <u>cancellation of a procurement process in terms of section 26</u>;*
> *(e) applicability of the provisions of confidentiality under section 49."*

Thus, Section 40 of the RTPP Act provides for the cases in which the remedy of appeal under Section 38 of the RTPP Act is not available. In the present case the respondents vide order dated13.10.2024 (Annex.R/2) have rejected the tender with respect tosix sites for which the tender was invited vide NIT dated30.08.2024 (Annex.2) and issued fresh NIT dated 14.10.2024 (Annex.8), and the petitioner has challenged the action of the respondents in rejecting the bid of the petitioner and in issuing afresh NIT without affording the petitioner opportunity of hearing. This court finds that Section 26 (1) (a) provides that the procuring entity may cancel the *process of procurement at any time prior to the acceptance of successful bid and in the present case the tenders with respect to the six sites were rejected including the bid of the petitioner prior to its acceptance. Thus, the provisions of Section 40 (d) of the RTPP Act are attracted as the same talks about the cancellation of procurement process in terms of Section26. Therefore, by virtue of the same no appeal could lie under Section 38 of the RTPP Act. Thus, the preliminary objection as raised by the learned counsel for the respondents is not sustainable.*

***13.** Now, proceeding to adjudicate the instant writ petition on merits, this court finds that the submissions of the petitioner majorly rests on two contentions; Firstly, that the action of the Respondents in conducting negotiation at the post-bid stage is illegal in terms of Section 15 of the RTPP Act read with Rule 69 of the RTPP Rules; Secondly, The Respondents could not have rejected the bid of the petitioner as the petitioner was the lowest bidder and also could not have issued a fresh NIT (Annex.8) without affording the petitioner the opportunity of hearing."*

12. The Hon'ble Apex Court in the case of ***ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors., reported in (2004) 3 SCC 553*** has observed in paras 8,10, 23, 25, 27, 52 and 53 as under:-

"***8.*** *As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.*

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10. *It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy v. State of Mysore [AIR 1954 SC 592 : (1955) 1 SCR 305] was followed subsequently by this Court in the case of D.F.O. v. Ram Sanehi Singh [(1971) 3 SCC 864] wherein this Court held: (SCC p. 865, para 4)*

> *"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy case [AIR 1954 SC 592 : (1955) 1 SCR 305] there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract,*

where the action challenged was of a public authority invested with statutory power." (emphasis supplied)

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23. *It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:*

> *"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."*

Para 11 of the said object reads thus:

> *"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."*

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25. *The learned counsel for the respondent then contended that though the principal prayer in the writ petition is for quashing the letters of repudiation by the first respondent, in fact the writ petition is one for a "money claim" which cannot be granted in a writ petition under Article 226 of the Constitution of India. In our opinion, this argument of the learned counsel also cannot be accepted in its absolute terms. This Court in the case of U.P. Pollution Control Board v. Kanoria Industrial Ltd. [(2001) 2 SCC 549] while dealing with the question of refund of money in a writ petition after discussing the earlier case-law on this subject held: (SCC pp. 556-58, paras 12 & 16-17)*

> *"12. In the para extracted above, in a similar situation as arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, the High Court committed no error in entertaining the writ petitions.*

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16. In support of the submission that a writ petition seeking mandamus for mere refund of money was not maintainable, the decision in Suganmal v. State of M.P. [AIR 1965 SC 1740] was cited. In AIR para 6 of the said judgment, it is stated that

> *'we are of the opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax'.*

17. Again in AIR para 9, the Court held:

> *'We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.'*

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess is unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case.

For instance, in the cases on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under protest; the writ petitions were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case."

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27. *From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

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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."*

13. The Hon'ble Apex Court in the case of ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum- Assessing Authority & Ors., reported in 2023 SCC OnLine SC 95*** has observed in paras 2,4 and 8 as under:-

"***2.*** *Two questions emerge for decision on this appeal. First, whether the High Court was justified in declining interference on the ground of availability of an alternative remedy of appeal to the appellant under section 33 of the VAT Act, which it had not pursued. Should the answer to the first question be in the negative, we would next be required to decide whether to remit the writ petition to the High Court for hearing it on merits or to examine the correctness or otherwise of the orders impugned before the High Court.*

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4. *Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is* *available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining* *whether an exceptional case has been made out for such entertainment would not be proper.*

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8. *That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of U. P. v. Indian Hume Pipe Co. Ltd.)** and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the High Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of ; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this court found the issue raised by the appellant to be pristinely legal requiring determination by the High Court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not*

** (2021) 93 GSTR 1 (SC).*

*** (1977) 39 STC 355 (SC).*

involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available."

The present case deals with the interpretation of the order dated 07.01.2021 issued in exercise of the powers conferred upon His Excellency the Governor of Rajasthan whereby a new clause 36E of Conditions of Contract has been inserted in the Public Works Financial & Accounts Rules, Part-II.

14. In the totality of the facts of this case and the observations of the Hon'ble Apex Court in various pronouncements, as quoted above, this Court can safely held that the petitioner cannot be ousted from invoking the writ jurisdiction and the present writ petition is held to be maintainable as the applicability of new inserted provision in PWF & AR and its interpretation can not be made under dispute redressal system.

15. On the basis of the pleadings and submissions of the parties, the material questions which arose for consideration of this Court are:-

A. Whether the orders and the rules framed in exercise of the powers by his Excellency the Governor of Rajasthan, are applicable to the RSRDCC or not?;

B. Whether the act of the RSRDCC in not extending the benefit of differential amount of GST in view of enhancement of the GST rate during commencement of the work, would not be applicable for the contractors performing the work under the RSRDCC, whereas the said benefit is extended to the other contractors (including the petitioner) performing their work under the Public Works Department or the Rajasthan Housing Board and denying such benefit to the petitioner is discriminatory and violative of Article 14 of the Constitution of India?; and

C. Whether the petitioner is entitled for the benefit of refund of differential 6% GST amount in view of the order dated 07.01.2021?

16. Learned Senior Advocate appearing for the petitioner submitted that the RSRDCC is a State as this is a Government Undertaking being run with the funds of the Government and its administration is in the hands of the Government Officers.

17. Counsel appearing for the respondent- RSRDCC is is not denying that the RSRDCC is not functioning totally with the funds of the State Government. The list of the Board of Directors of the RSRDCC shows that a Chairperson is the Hon'ble Deputy Chief Minister, Public Works Department, its Vice Chairman is Principal Secretary, PWD, GoR, and others Directors are Mr. Naveen Jain, IAS, Principal Secretary, Planning Department, Dr. Manish Arora, IAS, Commissioner Transport Department, Mr. D.R. Meghwal, Secretary to the Govt. and Chief Engineer, PWD, Rajasthan, Mr. Naresh Kumar Thakral, IAS, is Secretary to the Govt., Finance (Exp.), Rajasthan and the Managing Director of the RSRDCC is Mr. Sunil Jai Singh. The financial and administrative control of RSRDCC is with the Government of Rajasthan.

18. After due process of completion of the bid proceedings, the respondent- RSRDCC vide letter dated 21.10.2021 accepted the bid of the petitioner for contract price of Rs.61,33,24,944/- and Paisa 84 only. A contract agreement was executed in between the petitioner and the respondent- RSRDCC. As per Clause 2.1 of Chapter A. General of the Contract Agreement / bidding document, the source of funds for expenditure on the project is said to be met from the budget of Finance Revenue Department. Clause 16.0 of the bid document/ contract agreement (F. Special Conditions of Contract) provides that the Circulars issued by the Finance Department regarding the RTPP Act 2012 shall also be part of the agreement. Clause 16.0 of the Contract Agreement is quoted as under:-

> "*16.0 Circular No.3/2013, issued by finance department vide no.F.1(8) Fin/PWF&R/ 2011 dated 04.02.2023 regarding implementation of provisions under Rajasthan Transparency in Public Procurement Act, 2012 shall also be part of the agreement, which is appended with the document.*"

The clause quoted above clearly speaks that the PWF & Account Rules are applicable in the RSRDCC.

19. Clause 22.0 of the Contract Agreement also provides for procuring the steel as per the circular dated 08.08.2016 issued by the Chief Engineer, PWD, Rajasthan,

Jaipur. Clause 22.0 of the Contract Agreement is quoted as under:-

> *"22.0 SAIL, RINL, TATA Essar, Jindal Steel shall be used for reinforcement by the contractor, Or All steel shall be procured from Original Producers who manufacturer billets directly from iron ores and roll the billets to produce steel confirming to IS:1786 as per Chief Engineer, PWD Rajasthan, Jaipur circular No. CE&AS/TA/I/EE (D&T)/ 2016-17/ D-126 dated 08.08.2016."*

20. The another Clause 26.0 of the Contract Agreement says that the rate of Rajasthan PWD BSR corresponding in BOO shall be taken as correct in Non-BSR items. Clause 26.0 of the Contract Agreement is quoted as under:-

> *"26.0 In case of any typing error in Schedule 'G' the rate of Rajasthan PWD BSR corresponding to BOO shall be taken as correct and in case of Non-BSR items, the decision of the Engineering-in-charge will be final and binding."*

21. The another Clause of the bid document/ contract agreement is clause 34.0, which is quoted as under:-

> *"34.0 The Contractor is supposed to submit a suitable mix design for PQC, as per MoRTH specification. Suitable chemical admixture has to be used by the contractor in PQC. For construction of C.C. Pavement, the design mix of the controlled concrete shall be got done from any Govt. Engineering College, PWD Laboratory or any NABL*

accredited laboratory. The same shall be submitted to the Engineer in Charge before commencement of the work for approval."

22. On perusal of the letter dated 08.11.2024 (Annex.23) written to the petitioner by the respondent- RSRDCC, it is somewhat clear that the circulars and the orders issued by the Chief Engineer, Public Works Department, Jaipur, are also being followed by the respondent- RSRDCC.

On an information sought under the Right to Information Act, 2005 (for short 'the Act of 2005') by a third party, the Office of the Public Information Officer, Executive Engineer, Public Works Department, Division Seemalwada, District Dungarpur, clearly states that the respondent- RSRDCC is a Company owned or managed by the Public Works Department within the State of Rajasthan and outside the Rajasthan.

23. Senior Counsel appearing for the petitioner has placed before the Court the document (Annex.21), which is extract, taken from the Website of the respondent- RSRDCC, wherein the Act and the Rules which are applicable in the RSRDCC have also been shown. On the Website, it has been shown that the Public Works Financial & Accounts Rules are also applicable in the RSRDCC.

The Service (Recruitment & Selection) Rules, 2005 (Annex.22) also says that the respondent- RSRDCC is a Government of Rajasthan undertaking.

24. Learned counsels appearing for the respondents neither in the pleadings nor during the course of arguments have pointed that the respondent- RSRDCC is following certain other rules and regulations as regards the contracts/ works assigned by them apart from the act, rules and regulations and so also the Public Works Financial & Account Rules, which govern the contracts of the Government of Rajasthan and its Undertakings. When the respondent- RSRDCC is admittedly a Government of Rajasthan undertaking and has not formulated / promulgated any other separate rules and regulations for assigning the contracts by it then certainly it would be presumed with a full assertion that the contracts being assigned by the RSRDCC are also governed by the RTPP Act of 2012, the Public Works Financial & Accounts Rules and other Regulations, which govern the contracts assigned by the Government of Rajasthan and its Undertakings.

25. The Hon'ble Apex Court in the case of ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors., reported in 2002 (5) SCC 111,*** has observed in paras 15, 16, 17 and 23 as under:-

*"**15.** The use of the alternative is significant. The Court scrutinised the history of the formation of the three Corporations, the financial support given by the Central Government, the utilization of the finances so provided, the nature of service rendered and noted that despite the fact that each of the Corporations ran on profits earned by it nevertheless the structure of each of the Corporations showed that the three Corporations represented the "voice and hands" of the Central Government. The Court came to the conclusion that although the employees of the three Corporations were not servants of the Union or the State, "these statutory bodies are 'authorities' within the meaning of Article 12 of the Constitution".*

***16.** Mathew, J. in his concurring judgment went further and propounded a view which presaged the subsequent developments in the law. He said : (SCC p. 449, para 82):*

> *"A State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State."*

***17.** For identifying such an agency or instrumentality he propounded four indicia:*

(1) "A finding of the State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action." (SCC p. 454, para 96)

(2) "Another factor which might be considered is whether the operation is an important public function." (SCC p. 454, para 97)

(3) "The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion." (SCC p. 454, para 97)

(4) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?" (SCC p. 458, para 111)

***23.** From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act, 1860. Neither the form of the corporation, nor its ostensible autonomy would take away from its character as "State" and its constitutional accountability under Part III vis-à-vis the individual if it were in fact acting as an instrumentality or agency of the Government."*

26. His Excellency the Governor of Rajasthan is the Head of the State and therefore, the State Government, its departments, undertakings and other subsidiary agencies of the State are supposed to function under the orders issued by His Excellency the Governor of Rajasthan in exercise of his powers provided under the Constitution of India and other laws. Any undertaking of the State Government cannot say goodbye to the orders issued in the name of His Excellency, the Governor of Rajasthan. The RSRDCC is admittedly a Government of Rajasthan undertaking and the source of funds for the work order issued to the petitioner is the funds from the budget of the Finance Revenue Department of the State. The details on the Website of the RSRDCC also provides that the PWF&AR Rules are also applicable. In view of the above discussion, this Court can safely held that though the RSRDCC is a Government of Rajasthan undertaking and registered as a Company but is supposed to adhere to the orders and the notifications issued by His Excellency the Governor of Rajasthan and are applicable to the RSRDCC also.

27. The petitioner has been assigned the work by issuing the work order dated 25.10.2021 and the said work was to be completed by 10.02.2023. As on the date of issuance of the work order, the GST rates applicable were

12% and during the execution of the work assigned to the petitioner, the GST rates were enhanced to 18% i.e. there was a 6% increase in the GST.

Clause 45.1 of the Contract Agreement provides that the rates quoted by the Contractor shall be deemed to be inclusive of the GST at the time of payment to be borne by the Contractor. Clause 45.1 of the Contract Agreement is quoted as under:-

> *"45.1 The rates quoted by the Contractor shall be deemed to be inclusive of the GST, income tax, service tax, royalty, labour cess, or any other tax/duty/cess as applicable be law at the time of payment, shall be borne by the contractor for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law."*

On perusal of the said clause, the Court finds that there is omission as regards the revision of tax rates during commencement of the work and its effect.

28. Clause 47 read with Clause 47.1 of the Contract Agreement provides for price adjustment in forming the work, which are quoted as under:-

> ***"47. Price Adjustment:***
>
> *47.1. Contract price shall be adjusted for increase or decrease in rates and price of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formula given in the contract data:*

(a) The price adjustment shall apply for the work done from the start date given in the contract data upto end of the initial intended completion date and shall not apply to the work carried out beyond the stipulated time, whatever the reason of delay.

(b) The price adjustment shall be determined during each month from the formula given in the contract data.

(c) Following expressions and meanings are assigned to the work done during each month:

R= Total value of work done during the month. It would include the amount of secured advance granted, if any, during the month, less the amount of secured advance recovered. if any, during the month. It will exclude value for works executed under variations for which price adjustment will be worked separately based on the terms mutually agreed."

29. The Government of Rajasthan, Finance Department (G&T) Division, has issued the order dated 07.01.2021 as regards inserting Clause 36(3) after clause 36(d) in the conditions of contract. The order dated 07.01.2021 is quoted as under:-

"*The Governor is pleased to order that the following amendment is hereby made in the Public Works Financial & Accounts Rules, Part-II:*

1. After existing clause 36D of Conditions of Contract of Appendix XI, a new clause 36E shall be added, as under:-

"Clause 36E: *If any rates of Tax are increased or decreased, a new tax is introduced in India only, an* *existing Tax is abolised, or any change in interpretation or application of any Tax resulting from a change or Introduction in India only due to any National or State Statute, Ordinance, Decree or other law or any regulation or bye-law of any local or other duly constituted authority in India only, in the course of performance of contract, which was or will be assessed on the Contractor, in connection with the performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be.*

However, these adjustments would be restricted to direct transactions between the Owner and Contractor only those items which are included in bid. Further, no adjustment of the Contract Price shall be made on account of variation in deemed export benefits, if any. Any increase or decrease which is included in price variation formula incorporated in the contract shall not be accounted for this purpose.

Such increase including GST shall not be made in the extended period of contract for which the contractor alone is responsible for delay as determined by authority for extension of time."

By Order,

Sd/-

(Vimal Kumar Gupta)

Joint Secretary to the Government

The Court feels that this provision has been inserted to overcome the difficulties which arose because of the omission in the contract agreement as regards the variation in tax rates during commencement of work by a contractor and its effect.

30. It is the submission of the Senior Counsel appearing for the petitioner that since the order dated 07.01.2021 has been issued by the Finance Department, Government of Rajasthan, under the orders of His Excellency, the Governor of Rajasthan, so as to make amendments in the Public Works and Financial Accounts Rules Part-2. Once the Court has already held that the RSRDCC being a Government of Rajasthan Undertaking and other factors as discussed in the foregoing paras of this order has held that all the orders issued on powers being by His Excellency the Governor of Rajasthan and the provisions of PWF & Account Rules, the newly added Clause 36(e) shall also be applicable in cases of work contracts assigned by the RSRDCC and the question 'A' is answered as above.

31. As regards the question 'B' i.e. whether the action of the respondent- RSRDCC in not extending the benefit of refund of differential amount of GST in the light of the order dated 07.01.2021 to the petitioner is discriminatory and violative of Article 14 of the Constitution of India?

32. The respondent- RSRDCC is a Government of Rajasthan undertaking and as an answer to the question 'A', it has been held that the order dated 07.01.2021 is also

applicable upon the respondent- RSRDCC. As a fact on record, the other government bodies like Public Works Department, Rajasthan Housing Board etc. are extending the benefit in accordance to the order dated 07.01.2021 to the contractors to whom the work orders are being assigned to them. The petitioner in para 24 of the writ petition has categorically stated that the Rajasthan Housing Board permitted the petitioner to raise / collect differential percentage of the GST to the tune of 6% by including it on the invoice and has also placed on record the invoices as Annex.16. The respondents in the reply to the said para have only stated that the said documents pertain other institution i.e. the Rajasthan Housing Board and the respondent-Company relies upon Clause 45.1 of the Contract Agreement. The order dated 07.01.2021 has been issued in exercise of the powers conferred upon His Excellency the Governor of Rajasthan. The respondent- Company being a Government of Rajasthan Undertaking, as has been held above, and once the other Undertakings of the Government of Rajasthan are extending the benefits of refund of differential amount of the GST in the light of the order dated 07.01.2021 to the contractors including the petitioner in a case of contract assigned to him by the Rajasthan Housing board and now denial by the respondent- Company can certainly be said to be discriminatory.

33. As submitted by the learned counsels appearing for the respondents that they rely upon Clause 45.1 of the Contract Agreement, as quoted above, the petitioner is not entitled for refund of differential amount of GST.

Clause 45.1 is a part of the Contract Agreement which was signed in between the parties. However, the order dated 07.01.2021 clearly says that if any rates of Tax are increased or decreased in case of performance of a contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be. The variation in the GST rates came in existence during the course of performance of the contract by the petitioner which was assigned to him by the respondent- Company. The language of the order dated 07.01.2021 clearly speaks that if there is any variation in the GST rates, the effect arising from the variation would be applicable to the contractors whose work at the relevant time was in progress and not completed. In the present case, as per the facts on record, the work which was assigned to the present petitioner by the respondent- Company commenced on 11.11.2021 which completed on 10.02.2023 and the GST rates were revised vide Notification dated 31.12.2021 w.e.f. 01.1.2022. In the light of the aforesaid facts, this Court can safely held that the petitioner is entitled for the benefits which accrue under the order dated 07.01.2021 as like the benefits which have been extended by the Rajasthan Housing Board, a Government of Rajasthan Undertaking and the action of the respondents in not extending the benefit of refund of differential amount of GST is held to be illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

34. The Hon'ble Apex Court in the case of ***Natural Resources Allocation, In RE, Special Reference No.1 of 2012, reported in (2012) 10 SCC 1*** has observed in para 107 as under:-

> "***107.*** *From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowell case [(1996) 3 SCC 709] has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India."*

35. The Hon’ble Apex Court in the case of ***Union of India & Anr. v. Tarsem Singh & Ors., reported in (2019) 9 SCC 304*** has observed in paras 29, 30 and 31 as under:-

> “***29.*** *Both, P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] and Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] clinch the issue in favour of the respondents, as has been correctly held by the Punjab and Haryana High Court in Golden Iron and Steel Forging [Golden Iron and Steel Forging v. Union of India, 2008 SCC OnLine P&H 498 : (2011) 4 RCR (Civil) 375] . First and foremost, it is important to note that, as has been seen hereinabove, the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved in the manner set out hereinabove. It will be noticed that the awarding of solatium and interest has nothing to do with achieving this object, as it is nobody's case that land acquisition for the purpose of National Highways slows down as a result of award of solatium and interest. Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act i.e. speedy acquisition of lands for the purpose of National Highways. On this ground alone, the Amendment Act falls foul of Article 14.*

__30.__ Even otherwise, in P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] , despite the fact that the object of the Amendment Act was to acquire lands for housing schemes at a low price, yet the Amendment Act was struck down when it provided for solatium @ 5% instead of 15%, that was provided in the Land Acquisition Act, the Court holding that whether adjacent lands of the same quality and value are acquired for a housing scheme or some other public purpose such as a hospital is a differentiation between two sets of landowners having no reasonable relation to the object sought to be achieved. More pertinently, another example is given — out of two adjacent plots belonging to the same individual one may be acquired under the principal Act for a particular public purpose and one acquired under the amending Act for a housing scheme, which, when looked at from the point of view of the landowner, would be discriminatory, having no rational relation to the object sought to be achieved, which is compulsory acquisition of property for public purposes.

__31.__ Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] has clearly held that ordinarily a classification based on public purpose is not permissible under Article 14 for the purpose of determining compensation. Also, in para 30, the seven-Judge Bench unequivocally states that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired, as, if the existence of these two Acts would enable the State to give one owner different *treatment from another who is similarly situated, Article 14 would be infracted. In the facts of these cases, it is clear that from the point of view of the landowner it is immaterial that his land is acquired under the National Highways Act and not the Land Acquisition Act, as solatium cannot be denied on account of this fact alone.*"

36. Learned counsel appearing for the respondent-Company has also raised an issue that the law of estoppel will also apply in this case against the petitioner for claiming the benefit of refund of differential amount of GST as the petitioner himself has raised the bills without claiming the benefits of GST. Once the Competent Authority has inserted a provision under the Rules and Regulations which creates rights in favour of any person then certainly such person can claim the benefit under such order, rules and regulations. The law of estoppel cannot come in the way for claiming any such benefit because the petitioner has approached the RSRDCC and then the Court in reasonable time.

37. In view of the discussion made above and the answers to the questions as formulated, this Court is of the opinion that the petitioner is entitled for the benefit of refund of differential amount of 6% GST in view of the order dated 07.01.2021 (newly inserted Clause 36E of the Public Works Financial & Accounts Rules) and the writ petition deserves to be allowed.

38. Accordingly, the writ petition is allowed. The letter dated 08.06.2022 (Annex.14) is quashed and set aside. The respondents are directed to make refund of the differential amount of the GST i.e. 6% to the petitioner, which shall be effective from the revision of the GST Rate within 30 days from the date of submitting the certified copy of this order. The petitioner shall also be paid interest on due amount @ 6% per annum from the date when he first submitted its claim to the respondent- RSRDCC i.e. 20.01.2022.

39. In view of the order passed in the main petition, the stay application and pending application/s, if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar