IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Letters Patent Appellate Jurisdiction)

L.P.A. No. 162 of 2024

Jharkhand Urja Vikas Nigam Limited (JUVNL), earlier known as Jharkhand State Electricity Board (JSEB), through its General Manager having its office at Engineering Building, HEC, Dhurwa, P.O. & P.S.-Dhurwa, Ranchi

... **Appellant**

Versus

1. M/s RITES LIMITED, a Government of India Undertaking, under the Ministry of Railways and a Government Company within the meaning of Section 617 of the Companies Act, 1956 having Registered Office at 27, Barakhamba Road, New Delhi and, Corporate Office at RITES Bhawan, 1, Sector-29, P.O. Gurgaon, P.S. Gurgaon, District- Gurgaon-122001 in the State of Haryana, through its General Manager, Shri Dharam Gaj Prasad, aged 57 years, son of late Makrand Prasad Resident of Flat No. 674, Khelgaon, PO-Khelgaon; PS- Khelgaon; District- Delhi.

2. General Manager, M/s RITES LIMITED, a Government of India Undertaking, under the Ministry of Railways and a Government Company within the meaning of Section 617 of the Companies Act, 1956 having Registered Office at 27, Barakhambha Road, New Delhi and, Corporate Office at RITES Bhawan, 1, Sector- 29, P.O. Gurgaon, P.S. Gurgaon, District-Gurgaon-122001 in the State of Haryana. ... **Respondents**

3. The State of Jharkhand. **… Performa Respondent No. 3**

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

For the Appellant	: Mr. Rajiv Ranjan, AG Mr. Sachin Kumar, Sr. S.C. Mr. Karamdeo, Advocate
For the State	: Mrs. Vandana Singh, Sr. SC-III Ms. Apoorva Singh, AC to Sr. SC-III
For the Respondents	: Mr. Vikas Pandey, Advocate Mr. Sanjay Kumar Prasad, Advocate Mr. Piyush Poddar, Advocate Mr. Manav Poddar, Advocate Mr. Deepak Kumar Sinha, Advocate

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7th May 2024

Per, Shree Chandrashekhar, A.C.J.

The Jharkhand Urja Vikas Nigam Limited (in short, JUVNL) is aggrieved by the decision of the writ Court to appoint a sole Arbitrator to adjudicate upon the claims and counter-claims which the parties may decide

to raise.

2. The writ Court referred to the arbitration clause incorporated under Article 9 in the contract agreement and decision in the "*Northern Coalfield Limited v. Heavy Engineering Corporation Limited and another" (2016) 8 SCC 685* and decided that the disputes between the parties should be referred to sole Arbitrator for adjudication under the Arbitration and Conciliation Act, 1996 (in short "AC Act").

3. Aristotle had once remarked: "It is equitable to be willing that a difference shall be settled by discussion rather than by force; to agree to arbitration rather than go to Court for the umpire in an arbitration looks to equity, whereas the juryman sees only law. Indeed, arbitration was devised to the end that equity might have full sway".

4. However, the JUVNL seemingly does not agree with Aristotle and has filed this Letters Patent Appeal purely on a technical plea.

5. Briefly stated, the Jharkhand State Electricity Board (now represented through JUVNL) published NIT No.132/PR/JSEB/03 for the electrification of 4923 villages on a Turnkey basis under 5 packages and LOI's were issued in favor of the Rites Limited on 10th November 2003 and that followed the work orders in its favor. The total value of the works under contract was about Rs. 300 crores and the scheduled completion period was twelve months. However, the JSEB unilaterally reduced the volume of the works under the contract to 1848 villages for a value of Rs. 110.88 crores. Later, with the consent of JSEB, the works under contract were assigned to M/s Ramjee Power Construction Limited (in short, RPCL) which directly received payments from the JSEB. Before that, the Rites had requested for incorporation of an arbitration clause in the contract agreement through its letter dated 16th February 2004. Agreeing to the proposal of the Rites, an arbitration clause for resolving the dispute through arbitration was incorporated in Agreement No. 7/RE/JSEB/03-04 dated 16th March 2004 under Article 9. The JSEB granted an extension of time by one year and the scheduled completion date was extended till 15th March 2006. Still, there were

allegations and counter-allegations by the parties as to slow progress of the work, forged bank guarantees and wrong encashment of bank guarantees. The Rites invoked the arbitration clause and Mr. B.S. Meena was appointed as the sole Arbitrator on 6th December 2005 under the Permanent Machinery of Arbitration. But before the arbitral proceedings could conclude he superannuated from service on 30th May 2008 and Dr. Santokh Singh was then appointed as the sole Arbitrator. He endeavored to persuade the parties for mutual settlement but could not succeed in his efforts and, in the meantime, he was transferred elsewhere. Therefore, Dr. Gita Rawat was appointed as the sole Arbitrator who entered the reference on 2nd March 2009. The sole Arbitrator directed the parties to explore the feasibility of a mutual settlement and, pursuant thereto, both parties appeared on 19th and 21st July 2010 and informed her that the matter could not be mutually settled. Thereafter, the Rites made claims under 22 heads before the arbitral Tribunal and the JUVNL also made counter-claims under 8 heads.

6. The claims made by the Rites pertained to payments towards the supply of materials, pending supply bills, cost of maintenance, payment for erection work, price variation, bill for survey, loss of profit, loss of interest, loss due to wrong encashment of bank guarantee, loss of goodwill etc. The JUVNL made counter-claims for loss of revenue, over-heads and establishment costs, burden of interest payment, additional costs for work and other interests on various counts. In Arbitration Case No. PMA/BMS/ 04/2006, the arbitral proceedings were closed after hearing the parties on 21st July 2010 and the sole Arbitrator made an award on 19th January 2011 for Rs. 89,20,07,989/- with interest. In Appeal Arbitration Case No. 02/LS/2011, the appellate Authority partly allowed the objections of the Rites and published the award with an enhanced value of Rs. 327,76,03,759/- with interest of Rs. 416,96,11,748/-.

7. Aggrieved by the awards dated 19th January 2011 and 19th September 2011, the JUVNL laid a challenge thereon under section 34 of the AC Act in Misc. Case No. 16 of 2011. However, this petition was dismissed

on 22nd November 2017 holding that the award made by the Permanent Machinery of Arbitration cannot be challenged in a proceeding under section 34 of the AC Act.

8. The Rites then came to this Court with the following prayers:

> "(a) For referring all disputes relating to and arising out of the ten Agreements being No. 01 to 10/RE/JSEB/03-04 all dated 16.03.2004 in respect of the rural electrification in Jharkhand between the Petitioner and the Respondent for adjudication by the independent and impartial Sole Arbitrator or the panel of Arbitration as may be deemed fit and proper by this Hon'ble Court as the award dated 19.01.2011 passed by Joint Secretary and Sole Arbitrator, Dr. Gita Rawat in PMA/BSM04/2006 under the Permanent Machinery of Arbitration in favour of the petitioner being outside THE framework of law governing Arbitration AND AS SUCH will not be legally enforceable in a court of law in view of the judgment rendered by Hon'ble Supreme Court in the case of Northern Coalfields Ltd versus Heavy Engineering Corporation Ltd & Ors reported in (2016) 8 SCC 685 wherein the Hon'ble Supreme Court has, interalia, held that the award made by Arbitrator under the Permanent Machinery of Arbitration was outside the statute regulating Arbitration in this Country and, therefore, was not executable in law and accordingly held that such an award is outside the purview of Arbitration Act 1940 and also under the Arbitration and Conciliation Act, 1996 and accordingly referred the matter in the said case to the sole arbitrator for the adjudication of the dispute and relying upon the said judgment the Ld. Commercial Court, Ranchi vide order dated 22.11.2017 passed in Misc. Case No. 16/2011 filed by JSEB u/s 34 of the Arbitration and Conciliation Act, 1996 challenging the said Award dated 19.01.2011 was pleased to dismiss the said application filed by JSEB.
> (b) For any other appropriate writ (s)/ direction (s) as Your Lordships may deem fit and proper for imparting substantial and conscionable justice to the petitioner."

9. Before the writ Court, the JUVNL filed its affidavit-in-opposition narrating the lapses on the part of the Rites but what is relevant to note is that except raising a bald opposition in paragraph no. 3 that the writ petition is not maintainable there was no serious challenge by the JUVNL to the proposal of the Rites for arbitration through a Court-appointed arbitral Tribunal. The writ Court held as under:

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

> paragraph no.27 of the said judgment, it was held that right of the appellant to demand such an adjudication cannot be denied simply because it happens to be Government owned company or even the appellant is a Government company. In view of the above and finding the facts of the present case, the Court finds that the case of the petitioner is fully covered in light of the judgment of the Hon'ble Supreme Court in the case of "Northern Coalfields Limited" (supra) and there will be no difficulty in having all the claims and the counter claims of the petitioner as well as the respondent JUVNL referred to for adjudication afresh in accordance with law to the sole-Arbitrator to be nominated by this Court. Since the matter is being sent to the sole-Arbitrator for a fresh round of arbitration, safely it can be under the Arbitration and Conciliation Act, 1996.
> 17. As such, this writ petition is allowed.
> 18. Hence, this Court directs that all disputes relating to and arising out of the contract executed between the petitioner and the respondent JUVNL including all agreements which are the subject matter of the present writ petition, including the arbitration clause shall, hereby, stand referred to Hon'ble Mr. Justice Vineet Saran, a retired Judge of the Hon'ble Supreme Court to adjudicate upon all the claims and counter-claims which the party may chose to file before him. The Arbitrator shall be free to determine his own fee.
> 19. Accordingly, let a copy of this order be communicated to Hon'ble Mr. Justice Vineet Saran, a retired Judge of the Hon'ble Supreme Court.

10. A noticed above, the JUVNL has challenged the writ Court's decision to refer the disputes relating to and arising out of the contract between the parties. The learned Advocate General submits that the jurisdiction under Article 226 of the Constitution of India cannot be exercised in teeth of the statutory provisions under the AC Act. Elaborating upon this point, the learned Advocate General referred to section 7 of the AC Act to submit that the existence of an arbitration agreement in writing is a *sine qua non* for referring the parties for arbitration under the AC Act. To submit that the decision in "*Northern Coalfields Limited"* was rendered under Article 142 of the Constitution and the High Court has no such powers, the learned Advocate General referred to *"State of Punjab & Ors. v. Surinder Kumar (1992) 1 SCC 489* wherein the Hon'ble Supreme Court observed that merely because an order was issued by the Supreme Court it was not open to the High Court to issue a similar order under Article 226 of the Constitution, without having regard to different fact-situations. The learned Advocate General also referred to *"NTPC Limited v. SPML Infra Limited" (2023) 9 SCC 385* to impress upon the Court that the jurisdiction of the Court under section 11(6) of the AC Act in the post-2015 amendment era is limited to examining the existence of an arbitration agreement. To repeat, the argument advanced by the learned

Advocate General is that the power under Article 226 of the Constitution cannot be exercised in the face of a statutory bar in the AC Act.

11. On the other hand, Mr. Vikas Pandey, the learned counsel for the respondents heavily relied on *"Northern Coalfields Limited"* and submitted that arbitration being the most preferred mode for adjudication of a dispute was given preference in *"Northern Coalfields Limited"* and, on the same analogy, the writ Court passed an order in the present case for arbitration before a sole Arbitrator. In reply, the learned Advocate General next referred to *"Mahanadi Coalfields Ltd. and another v. IVRCL AMR Joint Venture" 2022 SCC OnLine SC 960* wherein clause 15 of the contract agreement provided for "settlement of dispute/arbitration" but the substantive part thereof provided that the settlement of dispute with Government agencies shall be dealt with in accordance with the guidelines of the Ministry of Finance. The learned Advocate General would therefore emphatically submit that the Hon'ble Supreme Court has held in a catena of judgments that no reference to arbitration can be made if there is no arbitration agreement between the parties. The learned Advocate General also referred to *"Magic Eye Developers Private Limited v. Green Edge Infrastructure Private Limited and others" (2023) 8 SCC 50* to further buttress his submission that the existence and validity of an arbitration agreement are therefore to be decided at the pre-referral stage itself and as held in "*N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd." (2023) 7 SCC 1,* that there cannot be any reference to the arbitration sans an agreement between the parties.

12. The *"Northern Coalfields Limited"* referred to *"Oil and Natural Gas Commission v. Collector of Central Excise" 1995 Suppl. (4) SCC 541* as to why the Supreme Court taking note of the disputes inter-se public sector undertakings and/or with the Government directed the Government of India to set up a committee and such a committee headed by the Cabinet Secretary was constituted. *"ONGC"* went through several clarifications in the coming years and seems to have lost its relevance by afflux of time. Finally, a 5-Judge Bench of the Hon'ble Supreme Court in *"Electronics Corporation of India v.*

Union of India" (2011) 3 SCC 404 recalled many of the directions issued in ONGC. In *"Northern Coalfields Limited"*, the award made by the Arbitrator under the Permanent Machinery of Arbitration was challenged in a civil suit. In that proceeding, the Heavy Engineering Corporation Limited took a defence that the plaint was liable to be rejected because the arbitral award prepared under the Permanent Machinery of Arbitration could not be challenged in a civil suit. It was contended that the award made under the Permanent Machinery of Arbitration being outside the statutory regime under the Arbitration Acts would not constitute an award that is amenable to be set aside under the Arbitration Acts. The *"Northern Coalfields Limited"* also considered that the award so made cannot be made a rule of the Court to be enforceable as a decree made against the other party.

13. The doctrine of stare decisis is not imperative or inflexible and to what extent it is to be applied must be determined by the Court. The essence of the decision is its ratio and not every observation made in the judgment nor what logically follows from various observations made in the judgment. In "*Bhavnagar University v. Palitana Sugar Mill (P) Ltd." (2003) 2 SCC 111* the Hon'ble Supreme Court observed that a little difference in facts or some additional facts may make a lot of difference in the precedential value of the judgment. In *"Union of India v. Dhanwanti Devi" (1996) 6 SCC 44* the Hon'ble Supreme Court observed that everything said by a Judge while giving a judgment does not constitute a precedent and the only thing in the decision that binds the parties is the principle upon which the case is decided. The decision in *"Northern Coalfields Limited"* to refer the disputes between the parties for adjudication to a nominated sole Arbitrator was based on the agreement/concession before the Hon'ble Supreme Court. We are of the view that the decision in *"Northern Coalfields Limited"* does not constitute "law" under Article 141 of the Constitution of India.

14. Notwithstanding that, we are not inclined to interfere with the order passed by the writ Court. To start with, there is an arbitration clause incorporated in Article 9 that provides that the disputes and differences

between the parties shall be settled through arbitration. In "*Vytla Sitanna v. Marivada Viranna & Ors." AIR 1934 PC 105* the decision of the panchayat in a family dispute was affirmed by the Privy Council. Sir John Wallis observed that: "Reference to a village panchayat is the time-honored method of deciding disputes of this kind, and has these advantages, that it is generally comparatively easy for the Panchayatdars to ascertain the true facts, and that, as in this case, it avoids protracted litigation which, as observed by one of the witnesses, might have proved ruinous to the estate. Looking at the evidence as a whole, their Lordships see no reason for doubting that the award was a fair and honest settlement of a doubtful claim based both on legal and moral grounds, and are therefore of opinion that there are no grounds for interfering with it". While this is an admitted proposition that resolution of the dispute through arbitration shall be a preferred mode, what is argued before us is that a party in dispute cannot be forced to go for arbitration.

15. It was at the insistence of the Rites that a provision for arbitration was incorporated under Article 9 in the contract agreement. Sub-section (4) of section 7 of the AC Act provides that an arbitration agreement shall be in writing if it is contained in (a) a document signed by the parties (b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement or (c) an exchange of statements of claim and defense in which the existence of the agreement is alleged by one party and not denied by the other. There is no dispute that Article 9 contains an arbitration agreement but the difficulty has arisen in the present case because the arbitration between the parties was conducted through the Permanent Machinery of Arbitration which specifically excluded the application of the Arbitration Act, 1940 (now, the Arbitration and Conciliation Act, 1996). This is too well settled that this is the substance and not merely the form in the pleadings or any provision of law or any condition or stipulation in a contract that has to be looked at for inferring the true intention of the parties. In "*Sopan Sukhdeo Sable v. Asstt. Charity Commr." (2004) 3 SCC 137* the Hon'ble Supreme Court observed that the

intention of the party concerned is to be gathered primarily from the tenor and terms of the pleadings taken as a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice or hair-splitting technicalities. The proposal of the Rites for incorporating the arbitration clause in the contract agreement is therefore required to be seen.

16. The letter dated 16th February 2004 written by the Rites suggesting for incorporating a provision for arbitration was couched in the following language :

RITES/RNC/JSEB/RE/129
Date- 16.02.2004

To,

The Chief Engineer (RE)
JSEB, Engineering Building,
Dhurwa, Ranchi

Sir,

Sub: Rural Electrification works on turnkey basis against package A,B,C,D & E.

While going through the work order for the above works, it is noticed that there is no mention of arbitration clause in the contracts. Similarly, the proformas for Material Received Certificate (MRC) for other than PSC Poles, Joint Measurement Certificate (JMC) and Handing over/ Taking over are also not enclosed which have already been submitted by us. In addition, it is also not clarified regarding the schedule of adjustment of mobilization advance although requested earlier by us.

Hence, the following should form part of the contract agreement :-

1. ARBITRATION CLAUSE :

In the event of dispute or difference to the interpretation and application of the contracts, such disputes shall be settled through Arbitration. Arbitration between RITES & JSEB shall be governed by Bureau of Public Enterprises letter No. 3/593-PMA dated 30th June 1993 as amended from time to time. Relevant clause of the letter is reproduced below :-

As referred vide Department of Public Enterprises letter No. 3/5/93PMA dated 30th June 1993 the relevant arbitration clause is reproduced below.

"In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the arbitration of one of the Arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India, in charge of the Bureau of Public Enterprises. The Arbitration Act, 1940 shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Deptt. of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such

reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties in the dispute will share equally the cost of arbitration as intimated by the Arbitrator".

2. Proforma for MRC for other than PSC Poles, JMC and handing over/ Taking over is again enclosed herewith, with draft agreement.

3. The mobilization advance should be adjusted from the balance 20% payments.

Thanking you

Yours faithfully
Bimal Prasad
AGM(Elect.)/Rites
Ranchi

17. In *"Jagdish Chander v. Ramesh Chander" (2007) 5 SCC 719* the Hon'ble Supreme Court held that where the agreement provided that in the event of disputes arising between the parties the same shall be referred to arbitration, the clause shall be construed as an arbitration agreement. The Hon'ble Supreme Court further elaborated that mere use of the word "arbitration" or "arbitrator" in a clause shall not make it an arbitration agreement if it requires or contemplates further or fresh consent of the parties, for reference to the arbitration.

18. The communication from the Rites for a provision in the contract agreement for the resolution of the disputes and differences between the parties which was accepted by the JUVNL can't be confined to the Permanent Machinery of Arbitration. The arbitration through the Permanent Machinery of Arbitration is just one mode of resolving the dispute between the parties. In *"Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc." (2016) 4 SCC 126* the Hon'ble Supreme Court observed that the party autonomy is the brooding and guiding spirit of the arbitration. Mere mention of one of the dispute resolution mechanisms shall not restrict the main provision in the arbitration clause which provided that: "In the event of dispute or difference to the interpretation and application of the contracts, such disputes shall be settled through Arbitration". Moreover, the JUVNL participated in the arbitral proceedings before the sole Arbitrator, objected to the claims made by the Rites and made counter-claims. The Rites preferred Appeal No. 02/LS/2011 which was contested by the JUVNL and a modified award was made on 19th

September 2011. This was the understanding of the JUVNL that the award was enforceable under the AC Act as it laid a challenge to the awards dated 19th January 2011 and 19th September 2011 in a petition under section 34 of the AC Act. In the order dated 22nd November 2017, the Commercial Court observed as under:

> "In the perspective of the above guidelines the O.P's have contended that this is a dispute between two public sector undertaking in which the matter was referred for arbitration before the sole Arbitrator Smt. Geeta Rawat, Permanent Machinery of Arbitration under Bureau of Public Enterprises New Delhi and therefore, the only remedy for setting aside the award or filing appeal against the arbitral award was to challenge the said award before the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice. But instead of availing the said remedy the petitioners have filed the instant application for setting aside of the award before this court which has no jurisdiction to entertain the matter.
>
> On this point the learned Senior Counsel appearing on behalf of the petitioner submitted that the appeal mechanism or even the Permanent Machinery of Arbitration has no existence as on date but he fairly conceded that the award published by the learned sole Arbitrator, Permanent Machinery of Arbitration is an award which is out side the statutory provision of the Arbitration and Conciliation Act and therefore, it is neither be amenable to be set aside under the said statute nor be made a rule of the court to be enforcible as a decree lawfully passed against the judgment debtor and the Permanent Machinery of Arbitration was and continues to be outside the purview of the Arbitration Act now replaced by the Arbitration and Conciliation Act.
>
> Relying upon the judgment rendered by the Hon'ble Apex Court in North Coal Field Ltd Vs Heavy Engineers Corporation Ltd. & Anr reported in (2016) 8 SCC 685, I find that the petition filed U/s 34 of the Arbitration and Conciliation Act filed by the petitioners for setting aside the award dated 19.01.2011 published by Smt. Geeta Rawat, Sole Arbitrator, Permanent Machinery of Arbitration is outside the purview of the Arbitration and Conciliation Act and therefore, it can not be entertained by this court and accordingly the objection petition dated 25/11/2011 is allowed and the petition filed U/s 34 of Arbitration and Conciliation Act for setting aside the award of PMA dated 11/04/2011 is accordingly dismissed as not maintainable with liberty to the parties to pursue in accordance with law whatever remedies are available to them in respect of the grievances qua award dated 19.01.2011."

19. At this stage, JUVNL took a position after the dismissal of Misc. Case No. 16 of 2011 that the Rites may approach the civil Court because the awards dated 19th January 2011 and 19th September 2011 are not enforceable in a Court of law. The learned Advocate General raised an argument that the Rites is not left remediless and it has a remedy by filling a suit for damages and compensation. In our opinion, this submission cannot be countenanced in law. Let us take a look at a converse situation. Assuming that the JUVNL had succeeded in its challenge laid to the awards dated 19th January 2011 and

19th September 2011 then what would have been the course open to the Rites? Quite obviously, the Rites would have gone in appeal under section 37 of the AC Act read with section 13(1-A) of the Commercial Courts Act, 2015. We are aware that a Court of law should not render a decision on hypothesis or a hypothetical situation but the situation presented before us is a real one. Now would it have been open to the JUVNL to contend that the awards were not amenable to a challenge under section 34 of the AC Act? The Rites also could not have taken a position in its Commercial Appeal that the awards were not executable as per the provisions under the AC Act.

20. The power under Article 226 of the Constitution is exercised in furtherance of justice, equity and good conscience. In matters that pertain to the larger public interest the power under Article 226 of the Constitution is not fettered by any limitation. By raising technical objections, a party to litigation cannot be permitted to frustrate the basic object and purpose behind the writs. The High Court under Article 226 of the Constitution issues prerogative writs to any person or authority within the territory or throughout the territories any directions, orders including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for enforcement of any of the rights conferred by Part III and for any other purpose. The argument made on the ground of alternative remedy does not sustain given the conduct of the JUVNL. As held by the Hon'ble Supreme Court in "*Baburam Prakash Chandra Maheshwari v. Antarim Zila Parish Ad Now Zila Parishad" AIR 1969 SC 556,* the alternative remedy is a self-imposed restriction on the powers exercisable by the writ Court. There is no rule or practice of universal application that the High Court shall not exercise its power under Article 226 wherever the aggrieved party has been provided an alternative route. The decision not to exercise its power because of alternative remedy may be a decision which can be taken in the facts and circumstances in a case but such decision of non-interference cannot be made a rule of practice. The Rites has awards dated 19th January 2011 and 19th September 2011 made in its favor. Before the sole Arbitrator, no objection was taken by the JUVNL that the

claims raised by the Rites cannot be decided through arbitration. Now taking refuge in a situation where the awards made by the Permanent Machinery of Arbitration are not enforceable, the JUVNL has raised a host of technical objections. There may be a substance in the proposal that the Rites may approach the civil Court, but then, why the Rites? The JUVNL which approached the Commercial Court to challenge the awards dated 19th January 2011 and 19th September 2011 would have instead gone to the civil Court.

21. The question is what is the recourse open to this Court; to remain chained to the technicality or remind itself of the observations of the Hon'ble Supreme Court in "*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani" (1989) 2 SCC 691.* Long back, it was observed that mandamus is very wide remedy that is easily available to reach injustice wherever it is found. The Hon'ble Supreme Court observed that the judicial control over the fast-expanding maze of bodies affecting the rights of the people should not be put into the watertight compartment, and it should remain flexible to meet the requirements of variable circumstances. In *"Dwarka Nath v. ITO" (1965) 3 SCR 536*, the Hon'ble Supreme Court observed that Article 226 of the Constitution is couched in a comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found.

22. The judgments referred by the learned Advocate General were rendered in the context of the AC Act and except for a broad proposition that the High Court should not exercise its powers in teeth of the provisions under the AC Act, we are not shown any decision that in a situation like the present one no order for referring the parties to arbitration could have been made by the writ Court. The submission that the exercise of power under Article 226 of the Constitution to accept the proposal of an aggrieved party for arbitration notwithstanding refusal by the other party shall open floodgates cannot be countenance in law. In *"Butu Prasad Kumbhar v. Steel Authority of India Ltd." 1995 Supp (2) SCC 225* the Hon'ble Supreme Court refused to accept "opening of the floodgates" argument that similar writ petitions shall start

pouring. The cases of the present nature are relatively few and arise only when the other party takes an unfair stand. To conclude, this is the duty of the High Court to reject a petition or the defence that is based on a purely technical stand to gain unfair advantage over the other parties.

23. Having regard to the aforesaid facts and circumstances in the case, L.P.A. No.162 of 2024 is dismissed.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

R.K./Nishant
N. A.F.R.