NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5401-5404 OF 2017

KARNATAKA POWER CORPORATION LIMITED ...APPELLANT

VERSUS

EMTA COAL LIMITED & ANR. ...RESPONDENTS

JUDGMENT

N. V. RAMANA, CJI

1 The present Civil Appeals, by way of Special Leave, arise out of the impugned common judgment dated 24.03.2016 passed by the High Court of Karnataka, at Bengaluru, whereby the High Court allowed the writ petitions filed by the respondents herein. By way of the writ petitions, the respondents had challenged the adverse decisions taken by the appellant with respect to the arrangement regarding coal procurement entered into by the parties for the purposes of the appellant's thermal power projects in the State of Karnataka.

2 A conspectus of the facts necessary for the disposal of the

present appeal is as follows: the appellant was allotted coal mines by the Union of India for captive consumption for their thermal power projects in the State of Karnataka. In 2002, M/s EMTA Coal Limited (hereinafter, "**EMTA**") was selected to form a joint venture with the appellant for the development of the mines, and the supply of coal to the said power projects. After setting up of the joint venture- Karnataka EMTA Coal Mines Limited (in short, "**KEMTA**") by the appellant and EMTA, all three companies entered into various contracts for development of the coal mines and supply and delivery of coal.

3 The above arrangement progressed without any dispute, until the Comptroller and Auditor General of India (in short, "**CAG**") submitted a report for the year ending March 2013, wherein it was observed that minimum quantity of coal rejects should be 10% per centum of the total production, valuing Rs. 52,37,00,000 (Rupees fifty two crore thirty seven lakh). At the first instance, the appellant raised objections to the CAG report stating that quantification of the coal rejects should be based on actuals, *i.e.*, the quantity of coal actually sent to the washery and the quantity of coal dispatched thereafter to the thermal power stations, after processing. The appellant specifically indicated that quantification of the coal rejects in the CAG report was

erroneous. However, despite the said objections raised by the appellant, the CAG finalized its report which was made available to the appellant.

4 It was only after receipt of this report that the appellant demanded reimbursement of Rs. 52,37,00,000 (Rupees fifty two crore thirty seven lakh) from KEMTA by demand letters dated July 31, 2014 and December 24, 2014. These two demand letters were impugned by the respondents in Writ Petition Nos. 2995-2996 of 2016 before the High Court of Karnataka.

5 Parallelly, it appears that a dispute subsisted between the respondents and the appellant regarding certain deductions made by the appellant on bills payable to KEMTA on account of washing charges which was based on the quantification by the CAG. The said deductions were challenged by the respondents vide Writ Petition Nos. 2997 and 2998 of 2016 before the High Court of Karnataka whereby the respondents additionally sought refund of Rs 59.78 crores (Rupees Fifty Nine Crores Seventy Eight Lakhs) with interest at the rate of 18% p.a. from 30.06.2012.

6 The above writ petitions were heard together by the High Court of Karnataka. *Vide* the impugned judgment, the High Court of Karnataka allowed the said writ petitions and, *inter alia,* directed the appellant to not initiate recovery from the respondents solely on the basis of the CAG report dated March

2013 and held that the respondents would be entitled to receive reimbursements for deductions made by the appellant from the bills.

7 Aggrieved by the above, the appellant has filed the present appeal by way of special leave under Article 136 of the Constitution.

8 The primary submission of the learned senior counsel appearing on behalf of the appellant is that the High Court granted the relief without adjudicating the disputes between the parties or properly appreciating the facts in issue.

9 On the other hand, learned counsel for the respondents supports the impugned judgment and submits that no grounds are made out by the appellant for this Court to interfere in the present matter in exercise of its powers under Article 136 of the Constitution.

10 Heard the counsel for the parties, and perused the material on record.

11 It appears that one of the grounds raised by the appellant in the present case relates to whether the High Court has correctly exercised its discretion in entertaining the subject writ petitions. Although this ground was initially raised by the appellant before the High Court, it appears that it was not pressed at the time of final hearing, as recorded in the impugned judgment.

12 It is worth noting that this Court has already held that in

matters pertaining to a state instrumentality, a writ may be maintainable in matters concerning contractual disputes in certain circumstances. While there is no bar on the maintainability of such writ petitions, the discretion lies with the High Courts as to whether to exercise the said jurisdiction or not. This Court has elaborately discussed the principles that must guide the High Courts while deciding whether to exercise their writ jurisdiction in contractual disputes between a State and a private party in a catena of judgments. [*See* ***ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*****, (2004) 3 SCC 553;** ***Joshi Technologies International Inc. v. Union of India*****, (2015) 7 SCC 728**]

13 However, we are not inclined to delve into the issue of whether the High Court's exercise of writ jurisdiction was appropriate, due to the peculiar facts and circumstances of the present case. The present matter pertains to a tender that was awarded by the appellant to EMTA nearly twenty years ago, in the year 2002. The CAG report that appears to have been the starting point for the entire dispute between the parties is dated March, 2013, close to a decade back. In such circumstances, to even advert to arguments on the maintainability of the writ petitions would be unjust to the parties involved.

14 Coming to the merits of the appeal, from the facts, it appears that in the first instance, when the CAG report was first submitted, the appellant itself had raised objections to the quantification of coal rejects arrived at by the CAG. However, when the audit objections were rejected by the CAG, and the final report was made available, the appellant demanded reimbursement from KEMTA based on the same CAG report to which it had filed objections. Such a change of stand by the appellant has not been sufficiently explained.

15 Additionally, a bare perusal of the clauses contained in the various agreements entered into between the parties does not indicate that such deductions could be made for the purposes of washing charges. There does not appear to be any specification laid down as to the method required to be adopted for washing of coal.

16 No material has been placed on record by the appellant to suggest that there was ever any problem with respect to the quality of coal being supplied by KEMTA to the appellant. Rather, the impugned order suggests that coal supplied by KEMTA was utilized by the appellant in its thermal power plants in order to generate electricity.

17 Taking into consideration the above facts and circumstances, we are of the opinion that no material has been

brought to the notice of this Court that would compel us to interfere with the impugned common judgment passed by the High Court in exercise of our jurisdiction under Article 136 of the Constitution.

18 Accordingly, the Civil Appeals filed by the appellant are dismissed.

19 Pending applications, if any, are accordingly disposed of.

.....CJI.
(N.V. RAMANA)

.....J.
(KRISHNA MURARI)

.....J.
(HIMA KOHLI)

NEW DELHI;
MAY 20, 2022.