

(2024) 05 GAU CK 0024

Gauhati High Court

Case No: Writ Petition (C) No. 2662, 2699, 2702, 2273, 2919 Of 2023

M/S New Age Petcoke Pvt Ltd.

APPELLANT

Vs

Numaligarh Refinery Ltd. And 2
Ors

RESPONDENT

Date of Decision: May 31, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 12, 14, 19, 21, 32, 226, 300A
- Indian Contract Act, 1872 - Section 5, 39
- Electricity (Supply) Act, 1948 - Section 43, 43A, 43A(1), 43A(2)

Hon'ble Judges: Kardak Ete, J

Bench: Single Bench

Advocate: K N Choudhury, A Kalita

Final Decision: Allowed

Judgement

1. Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. A. Das, learned counsel for the petitioners. Also heard Mr. A. Kalita, learned counsel for the respondents.

2. As the issues involved in these batch of writ petitions are similar on facts and law, the same are being disposed of by this common judgment.

3. Common challenge made is to the impugned e-mail dated 19.04.2023 issued by the respondents for resumption of supply of RPC from the point of

its stoppage/withholding, in continuation of the BRD, E-auction dated 01.02.2023 and also for declaration of the Delivery Schedule for RPC supply to

the petitioners as per the respective Delivery Orders, to have lapsed, and the contract of supply of RPC to have expired and further to declare that the

NRL authority has obligated to refund the security deposits and balance purchase advance payments due to its failure/shortfall in providing the contractually stipulated quantities of RPC.

4. The petitioners are engaged in the business of manufacturing Calcined Petroleum Coke (CPC in short) by processing Raw Petroleum Coke (herein after referred to as RPC in short). The product CPC is extensively used in Aluminum, Graphite, Ferroalloy and allied industries. It is contended that the petitioners have been lifting RPC churned out by the Refinery and has a long-established business relationship with the respondent authority, with outstanding financial credibility and upliftment track record.

5. The respondent NRL, via its auction agency had intimated the petitioners on 05.01.2023 as to the impending Online Forward Auction of RPC, to the tune of 20,000 MTs with respective dates of auction being set on 01.02.2023 and 03.02.2023. The Business Rule Document (herein after referred to as BRD in short) contains terms and conditions of the auction sale of RPC. The auction was held online on 01.02.2023.

6. In WP(C) 2662/2023, the challenge made is to the above impugned e-mail dated 19.04.2023 issued by the respondents for resumption of supply of RPC from the point of its stoppage/withholding on 25.03.2023, in continuation of the BRD, E-auction dated 01.02.2023 and also for declaration of the Delivery Schedule for RPC supply to the petitioner as per the Delivery Order dated 28.02.2023 to have lapsed, and the contract of supply of RPC to have expired and further to declare that the NRL authority has obligated to refund the security deposit of Rs. 58,65,000/- (Rupees Fifty Eight Lakhs Sixty Five Thousand only) and balance purchase advance payment of Rs. 3,03,72,721.25 (Rupees Three Crores Three Lakhs Seventy Two Thousand Seven Hundred Twenty One and Twenty Five Paise Only) due to its failure/shortfall in providing the contractually stipulated 1000 MT of RPC.

6.1. The petitioner had bid for 1000 MT quantity of RPC. Accordingly, it was duly allotted at a basic price of Rs. 58,650/MT. The NRL/ e-auction agency, transmitted the Lot Confirmation Letter on 10.02.2023 and the Delivery Order was issued on 28.02.2023, after deposit of the specified Security Deposit and the Full Payment of Rs. 6,91,48,350/-(Rupees Six Crores Ninety One Lakhs Forty Eight Thousand Three Hundred Fifty only) for

the 1000 MT of RPC was also made by the petitioner in advance as per the auction terms and conditions. The petitioner had started physical upliftment of RPC and by 25.03.2023, had provided with 560.76 MT of RPC by the NRL. However, on 27.03.2023, the respondent authorities suddenly issued an email intimating that the upliftment of sanctioned RPC had been entirely put on hold with effect from 25.03.2023 to 15.05.2023, on account of safety concerns in view of Refinery Turnaround 2023. It is contended that prior to and/or during the auction process, there was no intimation of such a prospective Turnaround/ Stoppage period, even though this appeared to be a common affair which is anticipated and planned for several months in advance by the NRL authority.

6.2. The petitioner requested for being permitted to lift RPC as it was never intimated to it as to why lifting was not allowed under supervised conditions. This unplanned, but wholly foreseeable, suspension of supply of RPC had a cascading effect on the petitioner's ability to manufacture CPC using RPC, for its valued customers and consequently, the petitioner has sustained huge financial loss. The petitioner finally wrote to the NRL on 11.04.2023, stating that there was a short supply of RPC by the NRL, to the tune of 439.24 MT as on 04.04.2023, i.e. the last date of Delivery.

Further, the contract/purchase order had already expired on 05.04.2023, without being extended by the NRL and even the last date of delivery specified as 04.04.2023, as per the Lot Confirmation letter and Delivery Order, had elapsed. Accordingly, the petitioner vide its letter dated

11.04.2023, in terms of the clause-26 of the BRD requested the respondent authorities to refund the Security Deposit of Rs. 58,65,000/- (Rupees Fifty

Eight Lakhs Sixty Five Thousand only) and an amount of Rs.3,03,72,721.25/- (Rupees Three Crores Three Lakhs Seventy Two Thousand Seven

Hundred Twenty One and Twenty Five Paisa) only in respect of the balance 439.24 MT of RPC which was not delivered to it in terms of the order

dated 28.02.2023.

6.3. The petitioners invoked Clause 26 of the Business Rules Document, which provided for refund of advance payment/sale price to the extent of the short delivery of the RPC. The NRL authority is legally bound to refund the Security Deposit of Rs 58,65,000/- (Rupees Fifty Eight Lakhs Sixty Five

Thousand) only and the balance amount of Rs. 3,03,72,721.25/-(Rupees Three Crores Three Lakhs Seventy Two Thousand Seven Hundred Twenty

One and Twenty Five Paisa) only in respect of the un-lifted 439.24 MT of RPC.

6.4. It is contended that the NRL authorities did not reply to the said letter, but kept withholding supply of RPC. Then, on 19.04.2023, all of a sudden,

the NRL authorities issued an e-mail, partially modifying its earlier email dated 27.03.2023 regarding suspension of upliftment activity till 15.05.2023.

The NRL stated in its email that RPC dispatch would be restarted in a very restricted manner, as shutdown activities were going on in full swing in the

Refinery. The email further requested the bidders to start lifting the RPC immediately using their trucks, while the validity of the Delivery Orders

would be amended and extended to 29.05.2023.

6.5. It is contended that the respondent/NRL authority, had halted the upliftment of RPC allegedly due to safety concerns, which were never specified

to the bidders at any stage of the online auction process. The bidders were also never aware of the impending Refinery shutdown, although that was a

pertinent and vital fact in the knowledge of the auctioning authority/NRL, to the non-disclosure of which implies gross negligence or callousness on

part of the NRL authorities. There was also no provision in the BRD for halt or withholding of supply of RPC, which in any case was supposed to be

delivered as per a fixed schedule. Further, there is also nothing in the BRD which authorizes the respondent authorities to extend the delivery schedule

beyond the last date of Delivery specified in the Delivery Order. The BRD only provides for extension of delivery schedule on payment of ground rent

in the event of the failure of the customer to lift the material within the delivery schedule. Thus, as per the BRD, the delivery period can only be

extended at the request of the customer and not otherwise. As such, the initial action of stoppage of RPC upliftment was de hors the contractual

stipulations and Bid document itself, which is being attempted to be corrected by another patently wrong decision of the NRL. The petitioner vide

email dated 24.04.2023 had agitated the aforementioned issue and sought for refund of the security deposit as well as the equivalent amount of the

shortfall quantity. In the said letter, the petitioner specifically contended that the delivery was suspended by the respondent authorities 11 days prior to

last date of delivery i.e. 05.04.2023 and on expiry of the said date, the contract became null and void.

7. In WP(C) 2699/2023, the challenge made is to the same above impugned e-mail for the resumption of supply of RPC from the point of its arbitrary

stoppage/withholding on 25.03.2023, and the now-expired delivery order dated 27.02.2023 to have lapsed, and the contract of supply of RPC to have

expired, and further to declare that the NRL authority is obligated to refund the Security Deposit of Rs.1,75,95,000/- (Rupees One Crore Seventy Five

Lakhs Ninety Five Thousand) only and balance purchase advance payment of Rs. 9,37,33,354.36/-, (Rupees Nine Crores Thirty Seven Lakhs Thirty

Three Thousand Three Hundred Fifty Four and Thirty Six Paisa) only, due to its failure/shortfall in providing the contractually stipulated 3000 MT of

RPC.

7.1. The petitioner was allotted 3000 MT quantity of RPC, at a basic price of Rs 58650/MT. The NRL/e-auction agency, transmitted the Lot

Confirmation Letter on 10.2.2023 and the Delivery Order was issued on 27.2.2023, after deposit of the specified Security Deposit and full Payment of

Rs. 20,74,45,050/- (Rupees Twenty Crores Seventy Four Lakhs Forty Five Thousand Fifty) only for the 3000 MT of RPC was also made by the

petitioner in advance, as per the auction terms and conditions.

7.2. The petitioner had started physical upliftment of RPC and by 25.03.2023, had been provided with 1644.46 MT of RPC by the NRL. However, on

27.03.2023, the respondent authorities suddenly issued an email intimating that the upliftment of sanctioned RPC had been entirely put on hold with

effect from 25.03.2023 to 15.05.2023, allegedly on account of safety concerns in view of Refinery Turnaround 2023.

7.3. It is contended that the petitioner requested for being permitted to lift RPC as it was never intimated to it as to why lifting was not allowed under

supervised conditions. This unplanned, but wholly foreseeable, suspension of supply of RPC had a cascading effect on the petitioner's ability to

manufacture CPC using RPC, for its valued customers and consequently, the petitioner has sustained huge financial loss. The petitioner finally wrote

to the NRL on 11.04.2023, stating that there was a short supply of RPC by the NRL, to the tune of 1355.54 MT as on 04.04.2023, i.e. the last date of

Delivery. Further, the contract/purchase order had already expired on 04.04.2023, without being extended by the NRL and even the last date of

delivery specified as 04.04.2023 as per the Lot Confirmation letter and Delivery Order, had elapsed. Accordingly, the petitioner vide its letter dated

11.04.2023, in terms of the clause-26 of the BRD of the auction, requested the respondent authorities to refund the Security Deposit of Rs.

1,75,95,000/- (Rupees One Crore Seventy Five Lakhs Ninety Five Thousand) only and an amount of Rs.9,37,33,354.36/- (Rupees Nine Crores Thirty

Seven Lakhs Thirty Three Thousand Three Hundred Fifty Four and Thirty Six Paisa) in respect of the balance 1355.54 MT of RPC which was not

delivered to it in terms of the D.O. dated 27.02.2023.

7.4. The NRL authority is legally bound to refund the Security Deposit of Rs 1,75,95,000/-(Rupees One Crore Seventy Five Lakhs Ninety Five

Thousand only) and the balance amount of Rs. 9,37,33,354.36/- (Rupees Nine Crores Thirty Seven Lakhs Thirty Three Thousand Three Hundred

Fifty Four and Thirty Six Paisa) in respect of the un-lifted 1355.54 MT of RPC.

7.5. The respondent/NRL authorities did not reply to the said letter, but kept withholding supply of RPC. Then, on 19.04.2023, all of a sudden, the

NRL authorities issued an e-mail, partially modifying its earlier email dated 27.03.2023 regarding suspension of upliftment activity till 15.05.2023. The

NRL stated in its email that RPC dispatch would be restarted in a very restricted manner, as shutdown activities were going on in full swing in the

Refinery. The email further requested the bidders to start lifting the RPC immediately using their trucks, while the validity of the Delivery Orders

would be amended and extended to 28.05.2023.

7.6. The petitioner vide email dated 24.04.2023 had agitated the aforementioned issue and sought for refund of the security deposit as well as the

equivalent amount of the shortfall quantity. In the said letter, the petitioner specifically contended that the delivery was suspended by the respondent

authorities 10 days prior to last date of delivery i.e. 04.04.2023 and on expiry of the said date, the contract became null and void.

8. In WP(C) 2702/2023, challenge made is to the same above impugned email for the resumption of supply of RPC from the point of its arbitrary

stoppage on 25.03.2023, and the now-expired delivery order dated 17.02.2023 to have been illegally violated by the respondents, and further declare

the contract of supply of RPC to have been avoided by the petitioner, consequent on the issue of the letter dated 13.04.2023, and further to declare

that the NRL authority is obligated to refund the Security Deposit of Rs. 2,93,25,000/- (Rupees Two Crores Ninety Three Lakhs Twenty Five

Thousand) only and an amount of Rs. 19,45,14,308.55/- (Nineteen Crores Forty Five Lakhs Fourteen Thousand Three Hundred Eight and Fifty Five

Paisa) only in respect of the balance 2812.92 MT of RPC, due to its failure/shortfall in providing the contractually stipulated 5000 MT of RPC.

8.1. The petitioner bid for 5000 MT quantity of RPC, which it was duly allotted at a basic price of Rs 58,650/- (Rupees Fifty Eight Thousand Six

Hundred Fifty only)/MT. The NRL / e-auction agency, transmitted the Lot Confirmation Letter on 10.02.2023 and the Delivery Order was issued on

17.02.2023, after deposit of the specified Security Deposit and the Full Payment of Rs. 34,57,41,750/- (Rupees Thirty Four Crores Fifty Seven Lakhs

Forty One Thousand Seven Hundred Fifty) only for the 5000 MT of RPC was also made by the petitioner in advance, as per the auction terms and

conditions.

8.2. The petitioner had started physical upliftment of RPC and by 25.03.2023, had been provided with 2187 MT of RPC by the NRL. However, on

27.03.2023, the respondent authorities suddenly issued an email intimating that the upliftment of sanctioned RPC had been entirely put on hold with

effect from 25.03.2023 to 15.05.2023, on account of safety concerns in view of Refinery Turnaround 2023.

8.3. The petitioner had requested for being permitted to lift RPC as it was never intimated to it as to why lifting was not allowed under supervised

conditions. The petitioner finally wrote to the NRL on 13.04.2023, intimating the respondent authorities that sudden stoppage of delivery of RPC is

leading to its financial loss and loss of goodwill in market as it is not able to fulfill the commitment made to its customer and has taken shutdown of its

factory. Accordingly, the petitioner vide its letter dated 13.04.2023, in terms of the clause-26 of the BRD requested the respondent authorities to

refund the Security Deposit of Rs. 2,93,25,000/-(Rupees Two Crores Ninety Three Lakhs Twenty Five Thousand) only and an amount of Rs.

19,45,14,308.55/-(Nineteen Crores Forty Five Lakhs Fourteen Thousand Three Hundred Eight and Fifty Five Paisa) only in respect of the balance

2812.92 MT of RPC which was not delivered to it in terms of the D.O. dated 17.02.2023.

8.4. The NRL authority is legally bound to refund the Security Deposit of Rs. 2,93,25,000/-(Rupees Two Crores Ninety Three Lakhs Twenty Five

Thousand) only and an amount of Rs.19,45,14,308.55/- (Nineteen Crores Forty Five Lakhs Fourteen Thousand Three Hundred Eight and Fifty Five

Paisa) only in respect of the balance 2812.92 MT of RPC, as the NRL had halted performance of its legal obligation to supply RPC, in a manner not

envisaged in contract or work order.

8.5. The respondent/NRL authorities did not reply to the said letter, but kept withholding supply of RPC. Then, on 19.04.2023, all of a sudden, the

NRL authorities issued an e-mail, partially modifying its earlier email dated 27.03.2023 regarding suspension of upliftment activity till 15.05.2023. The

NRL stated in its email that RPC dispatch would be restarted in a very restricted manner, as shutdown activities were going on in full swing in the

Refinery. The email further requested the bidders to start lifting the RPC immediately using their trucks, while the validity of the Delivery Orders

would be amended and extended to 28.05.2023.

9. In WP(C) 2273/2023, challenge made is to the same impugned e-mail, whereby the respondent authorities unilaterally extended the last date of the

Delivery Order to 28.04.2023 and the impugned lot confirmation letter dated 10.02.2023 to the extent of the balance amount of RPC and for declaring

that the Delivery Schedule for RPC supply to the petitioners as per the Delivery Order dated 28.02.2023 to have lapsed, and the contract of supply of

RPC to have expired, and further to declare that the NRL authority is obligated to refund the Security Deposit and balance purchase advance

payment to the petitioner.

9.1. Clause 14 (2) of the BDR stipulated that the Prospective bidders will inspect the materials offered for e-auction sale within stipulated period at the

site where the material is located and collect samples for testing at their own lab and thereby the bidder shall satisfy themselves about the condition,

quality, quantity and measurement etc of the materials. In terms of the said clause the Petitioner had collected samples and tested the same in their

own lab and found that the results of the said test conducted by the Petitioner tallied with the quality specification as given in the tender.

9.2. The Petitioner contended that having being thus fortified about the condition and quality of the materials, participated in the e-tender process by

submitting the Earnest Money Deposit in respect of 4000 MT of RPC to the tune of Rs.32,00,000/- (Rupees Thirty Two Lakhs) only by way of

RTGS. Further, the Petitioner quoted a rate of Rs. 58,650/- (Rupees Fifty Eight Thousand Six Hundred and Fifty) only per Metric Ton in respect of

3000 (Three Thousand) Metric Tons during the Forward Auction conducted on 01.02.2023.

9.3. Vide a letter dated 10.02.2023, the Petitioner was informed that its bid was accepted by the NRL in respect of 3000 (Three Thousand) Metric

Ton at the quoted bid price of Rs.58,650/- (Fifty Eight Thousand Six Hundred and Fifty) only per Metric Ton. It was also informed that the Security

Deposit of 10% amounting to Rs.1,75,95,000/- (Rupees One Crore Seventy Five Lakhs Ninety Five Thousand) only was to be paid within 7 (seven)

days from the issue of the Sale Intimation Letter. Further perusal of the said letter reveals that the Total amount of Rs. 20,74,45,050/- (Rupees

Twenty Crores Seventy Four Lakhs Forty Five Thousand and Fifty) only was to be deposited within 15 days from the issue of the Sale Intimation

Letter. A specific condition was put that 30 (thirty) days time would be allowed for delivery and 15 (fifteen) calendar days shall be allowed only on

payment of ground rent. The said conditions imposed by the letter dated 10.02.2023 reveals that the dates for delivery cannot be extended by the NRL

and it is left to the prerogative of the bidders to ask for extension of 15 days and that too on payment of ground rent.

9.4. The Petitioner submitted the Security Deposit by way of RTGS and informed the same to the concerned NRL by way of its email dated

18.02.2023. It was stated in the said email that an amount of Rs. 33,61,000/- (Thirty Three Lakhs Sixty One Thousand) only was paid after certain

adjustments of Security Deposit. Thereafter, paid the full payment for the 3000 (Three Thousand) Metric Tons of Raw Petroleum Coke amounting to

Rs. 20,74,45,050/- (Rupees Twenty Crores Seventy Four Lakhs Forty Five Thousand and Fifty) only by RTGS and informed the same to the NRL

vide its email dated 24.02.2023. Vide email dated 27.02.2023, the Petitioner was provided with the Delivery Order and the last date for delivery was

fixed on 04.04.2023.

9.5. The Petitioner uplift the allotted RPC in terms of the Delivery Order and had uplifted Raw Petroleum Coke to the tune of 1177.81 MT. However,

it was found that the materials lifted by the Petitioner was highly contaminated with building material like stones and concrete chunks some of which

could be apparently seen with the naked eye. As such, being apprehensive about the quality of the uplifted RPC, the Petitioner conducted a laboratory

test and found disparity in the quality of the uplifted RPC from the quality which was given in the BRD as well as from the sample which the

Petitioner had collected and tested prior to participating in the bidding process.

9.6. The Petitioner contended that the issue of supply of contaminated RPC was discussed with the senior officials of NRL during the customers

connect meeting held at Kolkata on 24.02.2023 and assurances were given that the matter was serious and would be looked into and necessary action

would be taken in that regard so as not to cause any loss to the Petitioner. However, as no positive action was forthcoming, the Petitioner sent an

email dated 01.03.2023 praying therein for allowing the Petitioner to withdraw therefrom and to refund the entire money without any deduction along

with 50% of the value of the last allotted quantity of 3000 MTs.

9.7. In the meantime, one of its associates concerned namely Guwahati Carbon Ltd (writ petitioner in WP(C) 2919/2023), who was also allotted RPC

had found serious discrepancies in the quality allotted in as much as the Ash contamination in the said RPC was found to be more than 1% and that of

silicon was found to be 700 PPM. As such apprehending similar contamination in the RPC to be lifted by the Petitioner, the Petitioner requested for

refund of the money paid by them without any deduction.

9.8. Being faced with the situation where the contaminated RPC could not be used to prepare CPC, the Petitioner preferred another representation

dated 17.03.2022, informing about the said fact to the NRL and thereby requesting for stopping of the supply of the contaminated Raw Petroleum

Coke and also to take back the RPC already lifted by the Petitioner. Similar representations dated 20.03.2023 and 22.03.2023 were also preferred by

the Petitioner before the NRL but till date there is no consideration of the said representations and the Respondent Authorities are turning a blind eye

to the genuine claims and grievances of the Petitioner.

9.9. It is contended that in the meantime, the time schedule for uplifting the RPC was approaching completion, failing which the Security Deposit along

with the balance amount of money in respect of the RPC which the Petitioner had already deposited with the NRL would be forfeited. The Petitioner

being in no bargaining position with the NRL had no option but to ask for extension of time vide its email dated 27.03.2023. On the same day i.e. on

27.03.2023, the Petitioner came in receipt of an email from NRL wherein it was informed to all concerned that there was temporary withholding of

upliftment of the auctioned RPC for 20000 MT carried out on 1st Feb 2023 vide auction ID 153524 w.e.f. 25th March 2023 to 15th May 2023

(tentative) on account of safety concerns in view of Refinery Turnaround 2023. It was further stated in the said email that the respective delivery

orders placed shall be amended in due course of time.

9.10. It is submitted that most arbitrarily the Respondent NRL thereafter, unilaterally, without obtaining any consent from the Petitioner extended the

Delivery Order dates vide an email dated 19.04.2023. It is submitted that as per the RPC upliftment data provided by NRL, the date of delivery order

in respect of the Petitioner was 27.02.2023 and the Delivery Order date was valid till 04.04.2023, however, the same was arbitrarily extended to

28.04.2023 i.e. after 15 days of expiry of the last date of delivery and furthermore, the Petitioner was asked to start the lifting of material with

immediate effect. The Petitioner has preferred another representation on 26.04.2023 praying for rescinding the Sale Intimation Letter as regards the

sale of Premium Grade RPC and for refund of the money in respect of the uplifted RPC without any deduction.

10. In WP(C) 2919/2023, the challenge made in this writ petition is to the same impugned communication dated 19.04.2023, whereby the respondent

authorities unilaterally extended the last date of the Delivery Order to 26.05.2023 and the impugned lot confirmation letter dated 10.02.2023 to the

extent of the balance amount of RPC to have lapsed, and the contract of supply of RPC to have expired, and further to declare that the NRL authority

is obligated to refund the Security Deposit and balance purchase advance payment to the petitioner.

10.1. It is contended that when the petitioner started lifting RPC, it was found highly contaminated and the quality of RPC was far inferior from the

sample which was collected and tested by the petitioner in terms of the BRD before participating in the bidding process.

10.2. Being faced with a situation where RPC could not be used to produce CPC, the petitioner preferred several representations vide emails before

NRL praying for amongst others refund of the money in respect of the uplifted RPC. The said representations never received any consideration at the

hands of NRL. Further more, arbitrarily and illegally, the dates in the Delivery Order (D.O.) in respect of upliftment were extended by NRL after

expiry of the date as provided in the D.O. Such action on the part of NRL was contrary to the provisions of Indian Contract Act, 1872 in addition to

being unfair and arbitrary

10.3. Having being thus fortified about the condition and quality of the materials, participated in the e-tender process by submitting the Earnest Money

Deposit in respect of 3000 MT of RPC to the tune of Rs. 32,00,000/- (Thirty Two Lakhs only) by way of RTGS. Vide a letter dated 10.02.2023, the

Petitioner was informed that its bid was accepted by the NRL in respect of 3000 (Three Thousand) Metric Ton at the quoted bid price of Rs. 58,650/-

(Fifty Eight Thousand Six Hundred and Fifty) only per MT. It was also informed that the Security Deposit of 10% amounting to Rs. 1,75,95,000/-

(One Crore Seventy Five Lakhs Ninety Five Thousand) only was to be paid within 7 (seven) days from the issue of the Sale Intimation Letter. Further

perusal of the said letter reveals that the total amount of Rs. 20,74,45,050/-(Twenty Crores Seventy Four Lakhs Forty Five Thousand and Fifty) only

was to be deposited within 15 days from the issue of the Sale Intimation Letter. A specific condition was put that 30 (thirty) days time would be

allowed for delivery and 15 (fifteen) calendar days shall be allowed only on payment of ground rent. The said conditions imposed by the letter dated

10.02.2023 reveals that the dates for delivery cannot be extended by the NRL and it is left to the prerogative of the bidders to ask for extension of 15 days and that too on payment of ground rent.

10.4. As required, the Petitioner submitted the Security Deposit by way of RTGS and informed the same to the concerned NRL by way of its email

dated 18.02.2023. It was stated in the said email that an amount of Rs. 33,61,000/- (Thirty Three Lakhs Sixty One Thousand only) was paid after

certain adjustments of Security Deposit. The Petitioner, thereafter, paid the full payment for the 3000 (Three Thousand) MT of RPC amounting to Rs.

20,74,45,050/- (Twenty Crores Seventy Four Lakhs Forty Five Thousand and Fifty) only by RTGS and informed the same to the NRL vide its email

dated 22.02.2023. Vide email dated 22.02.2023, the Petitioner was provided with the Delivery Order and the last date for delivery was fixed on

30.03.2023. On an earlier occasion the Petitioner was allotted 2000 MT RPC by the Delivery Order dated 12.01.2023, pursuant to tender dated

17.12.2023 but when the Petitioner uplifted the allotted RPC in terms of the said Delivery Order, it was found that the materials lifted by the Petitioner

was highly contaminated with building material like stones and concrete chunks some of which could be apparently seen with the naked eye. As such,

being apprehensive about the quality of the uplifted RPC, the Petitioner conducted a laboratory test in its own labs and found shocking disparity in the

quality of the uplifted Raw Petroleum Coke (RPC) from the quality which was given in the BRD as well as from the sample which the Petitioner had

collected and tested prior to participating in the bidding process.

10.5. Being faced with a situation where RPC could not be used to produce CPC, the petitioner preferred several representations vide emails before

NRL praying for amongst others refund of the money in respect of the uplifted RPC. The said representations never received any consideration at the

hands of NRL. Furthermore, arbitrarily and illegally, the dates in the Delivery Order in respect of upliftment were extended by NRL after expiry of

the date as provided in the Deliver Order. Such action on the part of NRL was contrary to the provisions of Indian Contract Act, 1872 in addition to

being unfair and arbitrary.

10.6. It is contended that being apprehensive about the issue of supply of contaminated RPC, the matter was discussed with the senior officials of

NRL during the customers connect meeting held at Kolkata on 24.02.2023 and assurances were given that the matter would be looked into and

necessary action would be taken in that regard so as not to cause any loss to the Petitioner. However, as no positive action was forthcoming, the

Petitioner preferred an email dated 01.03.2023 praying therein for allowing the Petitioner to withdraw therefrom and to refund the entire money

without any deduction along with 50% of the value of the last allotted quantity 2000 MTs.

10.7. The newly allotted RPC the Petitioner had found serious discrepancies in the quality allotted in as much as the Ash contamination in the said

RPC was found to be more than 1% and that of silicon was found to be 700 PPM and which has resulted in the materials being un-saleable. As such

the Petitioner requested for refund of the money paid by the Petitioner without any deduction. Thereafter the Petitioner being faced with the situation

where the contaminated RPC could not be used to prepare CPC, the Petitioner preferred another representation dated 17.03.2022, informing about the

said fact to the NRL and thereby requesting for stopping of the supply of the contaminated RPC and also to take back the RPC already lifted by the

Petitioner. Similar representation dated 20.03.2023 and 22.03.2023 were also preferred by the Petitioner before the NRL but till date there is no

consideration of the said representations and the Respondent Authorities are turning a blind eye to the genuine claims and grievances of the Petitioner.

In the meantime, the time schedule for uplifting the RPC was approaching completion, failing which the Security Deposit along with the balance

amount of money in respect of the RPC which the Petitioner had already deposited with the NRL would be forfeited. The Petitioner being in no

bargaining position with the NRL had no option but to ask for extension of time vide its email dated 27.03.2023. As per the RPC upliftment data

provided by NRL, the date of delivery order in respect of the Petitioner was 22.02.2023 and the Delivery Order date was valid till 30.03.2023,

however, the same was arbitrarily extended to 26.05.2023 i.e. after 20 days of expiry of the last date of delivery and furthermore, the Petitioner was asked to start the lifting of material with immediate effect. The Petitioner has preferred another representation on 19.05.2023 praying for rescinding the Sale Intimation Letter as regards the sale of Premium Grade Raw Petroleum Coke (RPC) and for refund of the money in respect of the uplifted Raw Petroleum Coke without any deduction.

10.8. It is contended that the respondent NRL has failed to perform its promise of providing the goods as per the quality which was given in the BRD

and as such the contract has been rendered void at the instance of NRL in view of Section 39 of the Indian Contract Act, 1872. Furthermore, the fact

that the Petitioner has been supplied with Raw Petroleum Coke of an inferior quality from the quality which was given in the BDR is not only

misrepresentation but also fraud being played by NRL to make undue gain by causing undue loss to the Petitioner. 10.9. It is contended that on

account of the willful and deliberate act of the NRL in not supplying the RPC of the quality as stated in the BDR, the Petitioner has already informed

the Respondent NRL that it shall not be lifting the balance of the Raw Petroleum Coke and in fact the Petitioner has asked the respondents to refund

the balance amount of money in respect of the uplifted allotted Raw Petroleum Coke and also the Security Deposit. As such, the impugned action of

the NRL in seeking to impose the contract upon the Petitioner at this stage is absolutely unjustified, illegal and contrary to the provisions of the Indian

Contract Act, 1872 and as such NRL is bound to make good the losses suffered by the Petitioner. As such, the impugned communication dated

19.04.2023 is non-est in the eyes of law.

11. It is contended that such impugned action of extending the date of delivery is without any jurisdiction as there is no provision in the BRD to amend

the D.O., which was apparently done to avoid refund of the money in terms of Clause 26 of the BRD. Further, the same is also beyond the scope and

ambit of the BRD. It is further contended that time being the essence of the contract, the action on the part of NRL in compelling the Petitioner to lift

the RPC beyond the Date of Delivery by arbitrarily, unilaterally extending the same, amounts to illegality and the same is sustainable in law.

12. It is contended that the respondent NRL authority, had halted the upliftment of RPC allegedly due to safety concerns, which were never specified to the bidders at any stage of the online auction process. The bidders were also never aware of the impending Refinery shutdown, although that was a pertinent and vital fact in the knowledge of the auctioning authority/NRL, non-disclosure of which implies gross negligence or callousness on part of the NRL authorities. There was also no provision in the BRD for halt or withholding of supply of RPC, which in any case was supposed to be delivered as per a fixed schedule. Further, there is also nothing in the BRD which authorizes the respondent authorities to extend the delivery schedule beyond the last date of Delivery specified in the Delivery Order. The BRD only provides for extension of delivery schedule on payment of ground rent in the event of the failure of the customer to lift the material within the delivery schedule. Thus, as per the BRD, the delivery period can only be extended at the request of the customer and not otherwise. As such, the initial action of stoppage of RPC upliftment was dehors the contractual stipulations and Bid document itself, which is being attempted to be corrected by another patently wrong decision by the NRL.

13. Mr. K.N. Choudhury, learned Senior Counsel for the petitioners, submits that all the petitioners being manufacturers of CPC by processing RPC had participated in Online Forward Auction of Raw Petroleum Coke, with auction ID 153524, to the tune of 20,000 MT, with respective dates of auction being set on 1.2.2023 (for Assam based Bidders) and 3.2.2023 (for all). The BRD containing terms and conditions of the auction sale of RPC was also attached to the aforementioned mail. As per the BRD after the issuance of the Delivery Order the extension of the date of lifting was only possible at the behest of the successful bidder subject to payment of ground rent after an initial extension of 15 days.

14. He submits that Delivery Order was issued to each of the petitioners after the payment of the total bid quantity by the petitioners. As such the only documents forming the part of the contract were the Online Forward auction intimation, the BRD and the Delivery Order. He submits that perusal of the aforementioned 3 documents demonstrates that the BRD is the document which governs the contract.

15. Mr. K.N. Choudhury, learned Senior Counsel, submits that on 27.03.2023, the NRL authorities unilaterally issued an email intimating that the upliftment of sanctioned RPC had been entirely put on hold with effect from 25.03.2023 to 15.05.2023, on account of safety concerns in view of Refinery Turnaround 2023 which is beyond the scope and ambit of the BRD. On 19.4.2023, again unilaterally, the NRL authorities issued an e-mail, partially modifying its earlier email dated 27.03.2023 regarding suspension of upliftment activity till 15.05.2023. Petitioners through its communication informed that as the lifting was stopped by the NRL authorities, the same amounts to the contract being concluded by the NRL authorities and as per clause 26 of the BRD, they are entitled for refund of security deposit and value of the un-lifted RPC. This is reflected from the communications to NRL authorities after 27.03.2024 and 19.04.2024.

16. Mr. K.N. Choudhury, learned Senior Counsel, submits that a duty is cast on the NRL to ensure that the quality of RPC to be strictly in accordance with the BRD as well as ensure completion of the delivery as mentioned in the Delivery Orders. Clause 19 of BRD reveals that extension can be granted only at the instance of the Bidder on payment of ground rent charges. Further such extension can be granted only for 15 days from the expiry of the Delivery Schedule. The last delivery date as per the DO was on 04.04.2023 for the petitioners in WP (C) 2662/2023 and WP(C) 2699/2023 and 02.05.2024 for petitioners in WP(C) 2702, however, the unilateral extension was given only on 19.04.2023. As there was no valid contract on that date, more so, in view of Section 39 of the Indian Contract Act, the action of the Respondents is absolutely without jurisdiction.

17. He submits that Clause 26 of BRD is based on section 39 of the Contract Act wherein it envisaged that when a party to a contract has been disabled from performing, his promise in its entirety, the promise may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. In the instant case the promise being the petitioners were disabled from lifting the materials vide the aforementioned mail dated 27.03.2024 of NRL, and as such the petitioners were at liberty to rescind the contract. The petitioners vide their emails had rescinded from

the contract and as such they are liable to get back their security deposit and the amount equivalent to the unlifted RPC. There is no provision in the BRD to amend the D.O. which was apparently done to avoid refund of the money in terms of Clause 26 of the BRD.

18. He further submits that Clause 10(C) of BRD in the facts and circumstances of the instant case is not attracted the Petitioners were prevented from lifting the allotted RPC on account of the suspension of delivery of RPC while in the custody of the NRL. From the language of Clause-10(c) it is evident that said clause envisaged a situation when there is a failure on the part of the Buyer to take the delivery beyond the tolerance limit. In the present case, the buyer was prevented by NRL to take the delivery due to abrupt suspension of delivery. As such the Petitioners are entitled to their security deposit and the amount equivalent to the unlifted RPC.

19. On maintainability of writ petitions raised by the respondents, on the ground of absence of public law element and the contract purely being private, Mr. K.N. Choudhury, learned Senior Counsel submits that the judgments cited by the respondents to question the maintainability of the writ petitions are not relevant in the present case as because same are with respect to who can be as State under Article 12 of the Constitution of India.

20. Mr. K.N. Choudhury, learned Senior Counsel, has placed reliance on the following judgments:-

(i) Kumari Shrilekha Vidyarthi and others vs. State of U.P. and others, reported in (1991) 1 SCC 212,

(ii) ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and other, reported in (2004) 8 SCC 553.

(iii) M.P. Power Management Company Limited, Jabalpur vs. Sky Power Southeast Solar India Private Ltd. and others, reported in (2023) 2 SCC

703.

21. Mr. A. Kalita, learned counsel for the respondents, at the outset has raised the maintainability of the present Writ Petitions. He submits that the

contract being a private contract and not a statutory contract, no Writ lies against such private contract, in as much as for exercise of jurisdiction

under Article 226 of the Constitution of India, it must involved a public law remedy and not the private law. Assuming, while not admitting that there

exists a dispute, it is purely a breach of contract or terms and conditions of the contract. The petitioners have accepted the terms and conditions provided in BRD to lift the RPC, pursuant to the auction notice. They were already behind the schedule in lifting the RPC and some of them have sought for extension of time, which was allowed to them. He submits that the entire case of the petitioners is based on the alleged violation of the rights under Article 14, 19, 21 and 300-A of the Constitution of India. It is submitted that the petitioner has miserably failed to demonstrate any public interest involved in the contract in question which would necessitate interference against the impugned action by a Constitutional Court. He submits that for seeking redressal of dispute arising out of the contract, it is imperative for the party to demonstrate public interest in addition to infringement of the rights guaranteed by Part- III of the Constitution of India. It is submitted that the disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. It is further submitted that by way of the present proceedings, the petitioners are seeking the enforcement of its private interest and also for the adjudication of a contractual dispute, which is absolutely impermissible under writ jurisdiction. In furtherance of the aforesaid preliminary objection, he submits that the petitioner by filing the present writ petition has attempted to bypass the alternate as well as efficacious remedy available to it, i.e. seeking a decree of declaration and recovery of damages, if any, by approaching the court of competent jurisdiction. Accordingly, he submits that writ petitions are not maintainable and no adjudication on merit is warranted.

22. Mr. Kalita, the learned counsel, on merit, submits that the notification for auction of 20,000 MT of RPC was published on 05.01.2023 in local

newspapers as well as in national newspapers. As per the BRD terms, the interested bidder needs to visit NRL refinery and collect sample for testing at their own lab regarding the quality of the RPC offered for auction. Only those bidders who have collected RPC samples are considered for registration for the auction and after satisfaction with the quality of RPC have participated in the auction. It was specifically notified in the terms and conditions that the bidders are advised to collect samples and verify the quality before bidding. No claims on quality will be entertained after the auction is completed. He has submitted that 6 (six) number of other bidders also collected samples and deposited their requested EMD participating in the auction. The auction of 20,000 MT of RPC was held on 01.02.2023 amongst Calciners located within Assam. There were 6 (six) number of successful bidders and allocation of auctioned quantity made to the successful bidders as per the terms and conditions of BRD. The discovered price of the auction was Rs. 58,650/- per MT. The petitioners have confirmed the acceptance of the auctioned price and the allocated quantities and thereafter the lot confirmation letters were issued to the petitioners on various dates by the respondents.

23. Mr. Kalita, the learned counsel, submits that Delivery Orders were issued beginning from 28.02.2023 with different validity dates. Total days allocated for upliftment were also fixed. Therefore, minimum upliftment per day as approx. estimated considering the upliftment till last date, the petitioner should have uplifted as estimated per day. However, the petitioners have shortfall in upliftment as required. Meanwhile, the Refinery Turnaround activity started from 26.03.2023 and movement of vehicles inside the refinery premises need to be reduced/restricted. The petitioners were expected to uplift maximum allocated quantity by this time. However, the petitioners failed to uplift as per pro-rata and it was clear that the petitioners would not be able to uplift allocated quantity within the Delivery Order validity date. It was due to this factor i.e. less upliftment of RPC by the petitioner till 25th March' 2023 which made NRL to withheld RPC loading for time being due to safety reason. It is submitted that refinery operation involves complicated large number of equipment located in different place e.g. Crude Distillation Unit (CDU), Hydrocracker Unit (HCU),

Delayed Coker Unit (DCU), etc. and predicting shutdown requirements for maintenance activities precisely is not possible.

24. Mr. Kalita, the learned counsel, denied that "this unplanned, but wholly foreseeable, suspension of supply of RPC had a cascading effect on the

petitioner's ability to manufacture Calcined Petroleum Coke using RPC, for its valued customers and consequently, the petitioner has sustained huge

financial loss." The upliftment speed of the petitioner was very sluggish vis-à-vis their Delivery Order quantity and they failed to uplift approximate

RPC and were shortage in upliftment. Some of the petitioners had requested to postpone the auction scheduled on 01.02.2023 till end of February,

2023 due to cash flow issue and non-availability of storage space for additional RPC as their previous stock was not consumed. Hence the claim of

the petitioner that he could not manufacture CPC using RPC due to NRL's temporary withdrawal is not correct. When the petitioner vide its letter

dated 11.04.2023 informed NRL that they were affected in terms of loss of their customer orders due to the temporary withdrawal of upliftment by

the NRL, the NRL immediately assessed the situation and made necessary arrangement so that upliftment can be re-started in restricted manner.

Accordingly, vide mail dated 19.04.2023, NRL AR formed the petitioners to re-start upliftment immediately.

25. Mr. Kalita, learned counsel, submits that the interpretation made by the petitioners of Clause 26 of the BRD is totally wrong as the clause states

that: "in the event of lot basis auction, any material being found to be deficient in quantity, quality, size, measurement, number and weight or description

from those stated in the list published on the website, the buyer shall have no claim against NRL or the Auctioneer nor shall the purchaser/buyer be

entitled to seek any annulment of sale or claim for loss of profit, interest, damage or any other ground except for refund of a part of purchaser's

money for the quantitative shortages in delivery and he shall be bound to remove the same from the site as good purchased by him. The weighments/

units indicated in the catalogue/ list are tentative and no guarantees assured for the same. In case of unit basis, amount against deficient in quantity

only shall be refunded." Therefore, there is no question of any refund from respondents' side. Further with regard to the claim of the petitioner

that despite financial hardship and space constraint the petitioner had participated in the auction and has successfully bid for RPC, he submits that the petitioners had done the same just to take advantage of the directive from Govt. of Assam, which allows the local calciners based within the State of Assam to participate in the bidding process on day 1 and calciners from other States can participate in the auction process on day 2 only for the left over quantity from day 1 of the auction. By bidding excess quantity over their requirement, the petitioner had denied other eligible bidders located outside Assam to participate in the auction on day 2 as there was no leftover quantity for day 2. Meanwhile RPC price had reduced by approx. Rs. 12000 to Rs. 14000.00 /MT w.e.f. 13th April 2023 vis-à-vis NRL RPC price of Rs. 58650/MT. So based on the mail from some of the petitioners dated 11.04.2023, when NRL informed the petitioner to re-start upliftment, they had refused to re-start uplifting of RPC. The petitioners had camouflaged the truth. In fact they had concealed vital information from this Court in their writ petitions.

26. Mr. Kalita, the learned counsel, further submitted that petitioners have wrongly interpreted Clause 26 of the BRD. Clause 26 is not applicable in the instant case as stated by the petitioner and therefore, there is no question of any refund from NRL side. He submits that the NRL refinery turnaround started w.e.f. 26th March 2023 and movement of vehicle inside refinery premises was restricted. However, when the petitioners informed NRL that they were affected in terms of loss of their customer orders due to the temporary withdrawal of upliftment by NRL, NRL immediately assessed the situation and made necessary arrangement so that upliftment can be re-started in a restricted manner. Accordingly, vide mail dated 19.04.2023, NRL informed the petitioner to re-start upliftment immediately. It was evident that the petitioner was lifting RPC in a very sluggish manner and NRL temporary withdrawal of upliftment would have no impact on their production. Hence, allegation made by the petitioner that NRL all of a sudden decided to allow re-start of lifting is not correct and misleading.

27. Mr. Kalita, learned counsel, submits that the petitioners were very sluggish vis-à-vis their Delivery Order quantity and they could uplift only

below approximate quantities There were shortage in their upliftment. The petitioners had requested to postpone the auction scheduled on 01.02.2023

till end of February, 2023 due to cash flow issue and non-availability of storage space for additional RPC as their previous stock was not consumed.

Hence, the claim of the petitioner that they could not manufacture CPC using RPC due to NRL's temporary withdrawal is not correct. It was evident

that the petitioner was lifting RPC in a very sluggish manner and NRL temporary withdrawal of upliftment would have no impact on their production.

28. Mr. A. Kalita, learned counsel, while summing up his agument, in nutshell, submits that an Auction Sale and other contracts cannot be equated.

The Letters were written mostly on apprehensions except one. The Lab report cannot be termed as Lab Report as the Report is on Petitioners's letter

head and no joint Lab test was sought for. Only on the basis of their own Lab Report, it cannot be said that whole lot as contaminated. BRD doesn't

envisage post auction testing. Petitioners have sought for reduction in price on the basis of falling market price after conclusion of the contract. The

Petitioners were behind schedule in lifting the RPC and hence sought for extension of time which was allowed to them. The Temporary withdrawal

was for a genuine reason of refinery shut down for annual maintenance work which is not arbitrary or whimsical or for any malafide reasons. It was

meant for all the six successful allottees. Petitioners have sought for 15 days extension vis-a-vis temporary withdrawal was for 20 days. Other than

the Petitioners (Brahmaputra Carbon Limited) and Guwahati Carbon Limited (another Petitioner), none of the other bidders had hinted any problem

about the quality of the RPC. M/s Carbon Resources Limited, the 6th bidder did not have any problem either about the quality or about temporary

withholding. They have completed the lifting of the allotted 5000 MT. After the receipt of the concerns about temporary withholding of the lifting, the

NRL after consideration lifted the withholding of the lifting of the materials. Therefore, he submits that, apart from the Writ Petitions not being

maintainable, on merit too, no illegality has been committed by respondent NRL which warranted any interference by this Court and as such the writ

petitions may be dismissed.

29. In support of his submissions, Mr. Kalita, learned counsel, has relied on the following judgments:

(i) Pimpri Chinchwad Municipal Corporation and others vs. Gayatri Construction Company and another, reported in (2008) 8 SCC 172.

(ii) Joshi Technologies International Inc. vs. Union of India, reported in (2015) 7 SCC 728.

(iii) Ramakrishna Mission and another vs. Kago Kunya and others, reported in (2019) 16 SCC 303.

(iv) St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others, reported in (2023) 4 SCC 498.

(v) Manabendra Kumar Sarma vs. Board of Control for Cricket in India represented by its Chairman and others, reported in 2024 SCC OnLine Gau

257. and

(vi) Kerala State Electricity Board and another vs. Kurien E. Kalathil and others, reported in (2000) 6 SCC 293.

30. Due consideration has been extended to the submissions of learned counsel for the parties and also considered the materials available on record.

31. Since the Respondent authorities have seriously raised the issue of maintainability of the writ petitions on the ground that the contract being private and not statutory contract, no writ would lie, this Court would first proceed to consider the same and refer to the case laws.

32. It is elementary that under Article 226 of the constitution of India, the High Court has jurisdiction to try issues both of fact and law. Exercise of the

jurisdiction is discretionary, but the discretion must be exercised on sound judicial principles. The Court is not deprived of its jurisdiction to entertain a

petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. When the petition

raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the dispute may

not appropriately be tried in a writ petition and Court may decline to entertain a petition. Rejection of a petition in limine will normally be justified,

where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the

petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction.

33. The writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction.

34. The Honâ€™ble Supreme court has time and again held that at the stage of entering into a contract, the State acts purely in its executive capacity

and is bound by the obligations of fairness. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot act

discriminatory. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to

be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence

the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the

case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the

aggrieved party to resort to alternate remedy of civil suit etc. Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance

of obligation voluntarily incurred. Writ petition is not maintainable to avoid contractual obligation occurrence of commercial difficulty, inconvenience or

hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the

parties had accepted with open eyes. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for

specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

35. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or

equal protection of law or if can be shown that action of the public authorities is without giving any hearing and violation of principles of natural justice

after holding that action could not have been taken without observing principles of natural justice. If the contract between private party and the State/

instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution and invoking its extraordinary jurisdiction.

36. It has been held that the distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petition under Article 226 to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

37. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness. 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.

38. It is also well settled that the mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/ inaction is, per se,

arbitrary. The question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

39. In the light of above settled position of law, I would proceed to consider the present case as to whether writ petitions are maintainable in the facts and circumstances of the case at hand.

40. The fact obvious from the record is that pursuant to the auction of RPC vide intimation dated 05.01.2023, by its auction agency M/s. e-

Procurement Technologies Pvt. Ltd. (Procure Tiger), to the tune of 20000 Metric Tons, with respective dates of auction on 01.02.2023 and

03.02.2023, the petitioners were allotted and transmitted the lot confirmation letters and the delivery orders for RPC, as per the auction terms and

conditions, prescribed in the BRD. The petitioners have started upliftment of the RPC after receipt of the delivery orders. In the meantime, the

respondent NRL has intimated through the impugned e-mail that upliftment of sanctioned RPC had been entirely put on hold with effect from

25.03.2023 to 15.05.2023, allegedly on account of safety concerns in view of Refinery Turnaround 2023. In addition to that, in WP(C) No.2702/2023

and WP(C) No.2699/2023, the petitioners contended that after they started upliftment of the RPC, same found to be wholly contaminated. Such

contamination was detected on Lab Test by the petitioners as they found that the quality of RPC which was shown and tested prior to the auction was

not the same as after the delivery orders. The petitioners have made several representations to that effect and physical meeting was also conducted.

The grievance of the petitioners is that since the respondents have suddenly withhold/stopped the lifting of RPC in terms of delivery orders, with

unplanned but wholly foreseeable suspension of supply of RPC, which had a cascading affect on the petitioners and against the terms and conditions

prescribed in the BRD, the contract get lapsed and they are entitled to refund their security deposits as well as the cost equivalent to the unlifted RPC.

41. On careful consideration of the matter, I find that the sudden stoppage of the upliftment of RPC, may be on account of safety concerns in view of

Refinery Turnaround, arbitrary. There was no intimation of such prospective stoppage period prior to or during the auction process, although the same

appears have been anticipated by the respondent NRL.

42. Having considered above, in my considered view the action of the respondent authorities in suddenly stopping the upliftment of the RPC and

extending it on its own, clearly reflects the arbitrary action on the part of the respondent authorities. State or its instrumentality, even in the contractual

field, is under obligation to act fairly and cannot act discriminatory or arbitrary.

43. As noted above, it is settled position of law that the mere fact that relief is sought under a contract which is not statutory, will not entitle the

respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the

action/ inaction is, per se, arbitrary. Thus, I am of the view that writ petitions are maintainable as the petitioners could demonstrate arbitrariness in the

action of the respondent. Moreso, there is no serious disputed question of facts involved in the present case which would require oral evidence.

44. Reference may be made to the case laws relied on by the learned counsel for the parties.

(i) In Kumari Shrilekha Vidyarthi, (Supra), the Honâ€™ble Supreme Court has held, which is reproduced herein below :-

“24. The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the

characteristics of the State at the threshold while making a contract requiring it to fulfill the obligation of Article 14 of the Constitution and thereafter

permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily

subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must

characterize all its actions, in what- ever 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. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.â€

(ii) In ABL International Ltd. (Supra), the Honâ€™ble Supreme Court has held, which is reproduced herein below :-

â€16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Smt. Gunwant Kaur &Ors. vs. Municipal Committee, Bhatinda and Ors. [1969 (3) SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held :

â€14. the High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law.

Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of

the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt.Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.â€

(iii) In M.P. Power Management Company Limited, Jabalpur vs. Sky Power Southeast Solar India Private Ltd. (Supra), the Honâ€™ble Supreme Court has observed and held as under :-

82. We may cull out our conclusions in regard to the points, which we have framed:

82.1 It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2 The principle laid down in Bareilly Development Authority (supra) that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

82.3 The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/ inaction is, per se, arbitrary.

82.4 An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty).

82.5 This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular vs.

Union of India²⁶. v. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

82.6 Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party (1994) 6 SCC 651 has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7 The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter.

Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8 The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court.

82.9 The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

82.10 The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be (1996) 6

SCC 22 guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

(iv). In Pimpri Chinchwad Municipal Corporation and others vs. Gayatri Construction Company, (Supra), the Hon'ble Supreme Court has held that

:-

¶11. In matters relating to maintainability of writ petitions in contractual matters there are catena of decisions dealing with the issue.

12. In National Highways Authority of India v. Ganga Enterprises (2003 (7) SCC 410), it was inter alia held as follows:

6. The respondent then filed a writ petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz.:

(a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to

Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have

been first answered as it would go to the root of the matter. The High Court instead considered Question (a) and then chose not to answer Question

(b). In our view, the answer to Question (b) is clear. It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the

Constitution of India. It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil (2000 (6) SCC 293), State of U.P. v. Bridge & Roof Co.

(India) Ltd. (1996 (6) SCC 22) and Bareilly Development Authority v. Ajai Pal Singh 1989 (2) SCC 116. This is settled law. The dispute in this case

was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however,

relied upon the cases of Verigamto Naveen v. Govt. of A.P. (2001 (8 SCC 344)) and Harminder Singh Arora v. Union of India (1986 (3) SCC 247).

These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in

a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.

13. In Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors. (2000) (6) SCC 293), this Court dealt with the question of maintainability

of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and availability of alternative remedies, as also

difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was noted as follows:

10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition.

The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual

payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article

226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A

contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also

unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the

purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the

contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions.

Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that

one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of

a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body

need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such

activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the

parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract

could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in

arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are

not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

14. Reference can also be made to *State of Gujarat and Ors. v. Meghji Pethraj Shah Charitable Trust and Ors.* (1994 (3) SCC 552). In para 22 it was

observed as follows:

22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alteram partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was -- as has been repeatedly urged by Shri Ramaswamy -- a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further.

15. Again in *State of U.P. and Ors. v. Bridge & Roof Company (India) Ltd.* (1996 (6) SCC 22), this Court dealt with the issue in paras 15 and 16 in the following manner:

15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, maybe, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a

particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.

16. At para 11 of *India Thermal Power Ltd. v. State of M.P. and Ors.* (2000 (3) SCC 379), it was observed as follows:

11. It was contended by Mr. Cooper, learned Senior Counsel appearing for appellant GBL and also by some counsel appearing for other appellants

that the appellant/IPPs had entered into PPAs under Sections 43 and 43-A of the Electricity Supply Act and as such they are statutory contracts and,

therefore, MPEB had no power or authority to alter their terms and conditions. This contention has been upheld by the High Court. In our opinion the

said contention is not correct and the High Court was wrong in accepting the same. Section 43 empowers the Electricity Board to enter into an

arrangement for purchase of electricity on such terms as may be agreed. Section 43-A(1) provides that a generating company may enter into a

contract for the sale of electricity generated by it with the Electricity Board. As regards the determination of tariff for the sale of electricity by a

generating company to the Board, Section 43(1)(2) provides that the tariff shall be determined in accordance with the norms regarding operation and

plant-load factor as may be laid down by the authority and in accordance with the rates of depreciation and reasonable return and such other factors

as may be determined from time to time by the Central Government by a notification in the Official Gazette. These provisions clearly indicate that the

agreement can be on such terms as may be agreed by the parties except that the tariff is to be determined in accordance with the provision contained

in Section 43-A(2) and notifications issued thereunder. Merely because a contract is entered into in exercise of an enabling power conferred by a

statute that by itself cannot render the contract a statutory contract. If entering into a contract containing the prescribed terms and conditions is a must

under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then

the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and

which have been incorporated therein as a result of mutual agreement between the parties. Therefore, the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section 43-A(2). Opening and maintaining of an escrow account or an escrow agreement are not the statutory requirements and, therefore, merely because PPAs contemplate maintaining escrow accounts that obligation cannot be regarded as statutory".

17. Therefore, the High Court ought not to have entertained the writ petition. Additionally, it appears that by order dated 17.1.2007 interim stay of the impugned order was granted and was continued by order dated 12.2.2007. It is pointed out by learned counsel for the appellants that since the order of the High Court was stayed and there was urgency in the matter fresh tenders were called for. Three persons submitted the bids and the work has already been allotted and a considerable portion of the work has already been completed. In view of aforesaid, we set aside the impugned order of the High Court and direct dismissal of the writ petition. It is however open to the respondents-writ petitioners to seek such remedy, if so advised, as is available in law. We do not express any opinion in that regard.â€

(v). In Joshi Technologies International Inc. (Supra) the Honâ€™ble Supreme Court has held that:-

â€œ55. Law in this aspect has developed through catena of judgments of this Court and from the reading of these judgments it would follow that in pure contractual matters extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere such remedies are available only when the non-Government contracting party is able to demonstrate that its a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract. Some of the case law to bring home this cardinal principle is taken note of hereinafter.

56. Significantly, in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. R. Rudani & Ors.[9] as well, this Court made it clear that if the rights are purely of private character, no mandamus can be issued. Thus, even if the respondent is a 'State',

other condition which has to be satisfied for issuance of a writ of mandamus is the public duty. In a matter of private character or purely contractual

field, no such public duty element is involved and, thus, mandamus will not lie.

59. On the basis of these facts, this Court observed that the aforesaid observations of the High Court relying upon Ramana Dayaram Shetty case

were not correct. Thus observed the Court, speaking through Ratnavel Pandian. J.:

“21. The finding in our view, is not correct in the light of the facts and circumstances of this case because in Ramana Daya Shetty case, there was

no concluded contract as in this case. Even conceding that the BDA has the trappings of a state or would be comprehended in 'other authority' for the

purpose of Article 12 of the constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid,

the Authority or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer

governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this

sphere they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e.

BDA in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the state and the persons aggrieved is non-statutory and purely contractual

and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to

compel the authorities to remedy a breach of contract pure and simple Radhakrishna Agarwal Vs. State of Bihar (Supra), Premi Bhai Parmar Vs.

Delhi Development Authority and DFO Vs. Biswanath Tea Company Ltd.

70. Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered

into by the State/public Authority with private parties, can be summarized as under:

70.1 At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2 State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

70.3 Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

70.4 Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5 Writ petition was not maintainable to avoid contractual obligation Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

70.6 Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7 Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8 If the contract between private party and the State/ instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching

the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction.

70.9 The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally

obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable.

Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between

public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the

contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or

controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of

India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into

consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

70.10 Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider

and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms

part of the principle of non-arbitrariness.

70.11 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.

(vi). In Ramakrishna Mission and another vs. Kago Kunya (Supra), the Hon^{ble} Supreme Court has held, which is reproduced herein below :-

“27. In Binny Ltd. v V Sadasivan⁷, a two judge Bench of this Court noted the distinction between public and private functions. It held thus:

“11 ‘It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A

body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by

the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in

social or economic affairs in the public interest.

28. The Bench elucidated on the scope of mandamus:

"29. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to

be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any

right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be

either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such

action." There cannot be any general definition of public authority or public action. The facts of each case decide the point."

29. More recently in *K K Saksena v International Commission on Irrigation and Drainage*⁸, another two judge Bench of this Court held that a writ

would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ

jurisdiction, all its decisions would not be subject to judicial review. The Court held thus: "43. What follows from a minute and careful reading of the

aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article

12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such

cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those

judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of

a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ

petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ

of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.â€

30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

(vii). In *St. Maryâ€™s Education Society and another vs. Rajendra Prasad Bhargava* (Supra), the Honâ€™ble Supreme Court has held, which is reproduced herein below :-

â€75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of ""State"" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming

amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by

Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution

may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the

domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or

decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being

amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory

provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an

employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It

is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school

and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect

to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is

regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such

interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words,

the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.â€

(viii). In Manabendra Kumar Sarma, (Supra), the Honâ€™ble Supreme Court has held, which is reproduced herein below :-

18. From the pleadings as well as the above submissions, the following points for determination arises for consideration:

i) Whether the writ petitions would be maintainable against the respondents in the present facts?

(ii) Whether this Court in exercise of jurisdiction under Article 226 of the Constitution can adjudicate the dispute?

(III) What relief or reliefs, the parties are entitled to?

23. In the backdrop of the aforesaid judgments which were placed by the learned senior counsel for the petitioners, one aspect is very clear that the

BCCI though not a State within the meaning of Article 12 of the Constitution but when the BCCI exercises public functions It would be amenable to

Article 226 of the Constitution.

24. In the backdrop of the above, let this Court take note of the two other recent judgments of the Supreme Court. The Supreme Court in the case of

Ramakrishna Mission (supra) dealt with the question as to whether proceedings under Article 226 of the Constitution was maintainable against

Ramakrishna Mission. The facts involved therein were that one Kago Kuniya, the first respondent before the Supreme Court joined Ramakrishna

Mission Hospital at Itanagar on 15-3-1980 as a General Duty Worker. He was regularized with effect from 01.08.1980 by a letter dated 23.07.1980.

He was made permanent on 13.04.1984. Subsequently, on 31.12.2005, he was promoted as an Office Assistant with effect from 01.10.2005. On

31.01.2015, the hospital informed the first respondent that he would be retiring from service on 24.03.2015 In accordance with the Service Rules,

consequent upon the completion of 35 years of service. It is under such circumstances, the respondent No. 1 before the Supreme Court filed a writ

petition before this Court challenging the said communication. The coordinate Bench of this Court allowed the writ petition holding that Ramkrishna

Mission would be a 'State' within the meaning of Article 12 of the Constitution and on merits appropriate directions were issued.

A writ was preferred by the Ramkrishna Mission before the learned Division Bench of this Court. The learned Division Bench of this Court dismissed

the Writ Appeal observing that Ramakrishna Mission may not be a State within the meaning of Article 12 of the Constitution in the strict sense of the

term but none the less, being a hospital performing public duty and consequently would be amenable to the writ jurisdiction under Article 226 of the Constitution on a liberal interpretation of the expression ""authority"" in Article 12 of the Constitution. The Supreme Court in the said judgment after taking note of the earlier judgment of the Supreme Court observed that even if the body discharges a public function in wider sense, there is no public law element involved in the enforcement of a private contract of service. The Supreme Court further observed that contract of purely private nature would not be subject to a writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. In the said judgment, i.e. In the case of Ramakrishna Mission (supra), the Supreme Court relied upon the judgment in the case of Binny Ltd. v. V. Sadasivam, (2005) 6 SCC 657 wherein it was opined that the scope of mandamus is determined by the nature of the duty to be enforced rather than the nature of identity against whom it is sought. If a private body which discharging a public function denies any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The Supreme Court in the said judgment came to an opinion that Ramkrishna Mission does not discharge a public function. It was opined that for an organization to be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. It was further opined that medical services are provided by both the private as well as the State entities. The character of the organization as a public authority is dependent on the circumstances of the case. Therefore, setting up the hospital, the Mission cannot be construed as having assumed public functions. Further, the hospital of the Appellant therein as observed had no monopoly status conferred or mandated by law. It was also opined that merely because land has been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In addition to the above, it was also opined that the absence of the State control in the management of the hospital had a significant bearing upon the Supreme Court in coming to the conclusion that the hospital of

the Appellant therein did not come within the ambit of a public authority, Paragraph Nos. 26, 27, 28, 29, 30, 32, 33 & 34 being relevant are quoted

herein below:

26. In *Federal Bank Ltd. v. Sagar Thomas* this Court analysed the earlier judgments of this Court and provided a classification of entities against

whom a writ petition may be maintainable:

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be

maintainable against (1) the State (Government); (II) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company

which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive

obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a

statutory function.

27. In *Binny Ltd. v. V. Sadasivan*, a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus:)

11.... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body

is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public

or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or

economic affairs in the public interest.

28. The Bench elucidated on the scope of mandamus:

29. ... However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to

be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any

right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be

either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action...

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

29. More recently in *K.K. Saksena v. International Commission on Irrigation & Drainage*, another two-Judge Bench of this Court held that a writ

would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ

jurisdiction, all its decisions would not be subject to judicial review. The Court held thus:

43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is ""State"" within the

meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add

that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer

to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is

that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore,

even if writ petition would be maintainable against an authority, which is ""State"" under Article 12 of the Constitution, before issuing any writ,

particularly writ of mandamus, the court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as

distinguished from private law.

(ix). In *Kurien E. Kalathil (Supra)*, the Honâ€™ble Supreme Court has held, which is reproduced herein below :-

â€œ11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions.

Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that

one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of

a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body

need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.â€

45. The case laws above are well settled proposition of law which does not require any consideration for its applicability in the present case as the maintainability of the writ petitions depends on the facts of each case. As noted above, in my considered view, the action of respondents is not only contrary to the BRD but is per se arbitrary and as such is amenable to writ jurisdiction and therefore, the present writ petitions are maintainable.

46. Coming to the merit of the matter, as noticed above, pursuant to the auction of RPC vide intimation dated 05.01.2023, by its auction agency M/s.

e-Procurement Technologies Pvt. Ltd. (Procure Tiger), to the tune of 20000 MTs, with respective dates of auction on 01.02.2023 and 03.02.2023, the

petitioners were allotted and transmitted the lot confirmation letter and the delivery order for RPC, as per the auction terms and conditions, prescribed

in the BRD. The petitioners have started upliftment of the RPC after receipt of the delivery orders. In the meantime, the respondent NRL has

intimated through impugned e-mail that upliftment of sanctioned RPC was put on hold with effect from 25.03.2023 to 15.05.2023, on account of safety

concerns in view of Refinery Turnaround, 2023. The grievance of the petitioners is that since the respondents have suddenly withhold/stopped the

lifting of RPC in terms of delivery orders, with unplanned but wholly foreseeable suspension of supply of RPC, which had a cascading affect on the

petitioners and against the terms and conditions prescribed in the BRD, the contract get lapsed and they are entitled to refund their security deposits as

well as the cost equivalent to the unlifted RPC.

47. It is the contention of the petitioners that the stoppage/ withholding of the upliftment of RPC, allegedly on account of safety concerns in view of

Refinery Turnaround, is not sustainable as prior to or during the auction process, there was no intimation of such perspective Turnaround/stoppage

period, even though the same was common affair which anticipated and planned for several months in advance by the NRL authority. In addition to

that, in WP(C) No.2702/2023 and WP(C) No.2699/2023, the petitioners contended that after they started upliftment of the RPC, the RPC were found

to be wholly contaminated. Such contamination was detected on Lab Test by the petitioners as they found that the quality of RPC which was shown

and tested prior to the auction was not the same as after the delivery orders. The petitioners have made several representations to that effect and

physical meeting was also conducted. It is the contention of the petitioners that the action of the respondent authorities in suddenly stopping the

upliftment of the RPC and extending it on its own whims and fancies clearly reflects the arbitrary action on the part of the respondent authorities.

48. To appreciate and analyze the grievance raised by the petitioners, this Court deem it apposite to refer and consider the relevant Clause of the

BRD, which governs the contracts, relevant portion of which are quoted hereunder for ready reference:-

CONDITIONS OF E-AUCTION SALE

1. The material as per the list declared on the Auctioneer's i.e. M/s e-Procurement Technologies Ltd. website shall be disposed off by way of e-

auction through the Auctioneer's website.

2. The prospective bidders will inspect the material offered for e-auction sale within stipulated period, at the site where the material is located and

collect composite samples for testing at their own lab. The bidders shall satisfy themselves about condition, quality, quantity, and measurement etc. of

the material which they intend to purchase. No complaints shall be entertained regarding description, quantity, size, measurement, and weight of the

material as the information given in the catalogue (Annexure 1) is approximate and no warranty or guarantee shall be implied. Materials shall be sold

after the bidders have inspected the material and conducted requisite tests on the collected composite samples to their satisfaction. However, it is not binding upon NRL to ensure whether bidders have conducted the requisite tests after collection of sample. Error in the description/quantity/measurement/utility/number/ weight/ condition etc. of the material as given in the catalogue/ list published on the Auctioneer's website shall not form a cause to the bidder to complain or to avoid completed sale or bid.

3. For participation in the e-auction, the prospective bidders shall register themselves with the Auctioneer's website. Only registered bidders can participate in the e-auction. The bidders shall pay the 'Earnest Money Deposit (EMD)' for the lot to the Auctioneer prior to the e-auction. The amount

of EMD (as per catalogue) shall be in the form of Demand Draft/ NEFT drawn in favour of M/s. eProcurement Technologies Ltd. (Procure Tiger).

4. On completion of e-auction proceedings & after receipt of e-auction statement from the Auctioneer, the NRL Marketing & BD shall take decision in respect of acceptance or rejection of bids within 7 working days of receipt of intimation from Auctioneer. Such decision shall be binding on the bidders as well as the Auctioneer. NRL shall not be bound to assign any reason for such acceptance or rejection of bids.

5. As per the decision of the auction committee, auctioneer shall issue Sale Intimation Letters to the successful bidders of the respective lots under intimation to NRL, within two working days of receipt of confirmation from NRL.

6. No other special permission shall be granted in that respect once the list/catalogue is displayed. However, express undertaking (Annexure III) shall have to be given by the buyer that he shall be liable to and shall have to remove all the items purchased within stipulated time. All consequential damages as a result of such cutting, breaking etc. during removal will be determined by the concerned Department of NRL and the successful bidder/buyer shall be responsible for such damages.

7. EMD of the unsuccessful bidders in the e auction shall be refunded immediately by the Auctioneer. The EMD of the successful bidders shall be transferred to NRL's account and the same shall be considered as Security Deposit amount and shall be released after completion of lifting only.

8. Buyer to comply with NRL HSE (Health, Safety, Environment) policy during entire operation of shifting and loading.

9. The successful bidder shall furnish declaration in the proforma (Annexure III) to auctioneer immediately after receipt of Sale Intimation Letter for carrying out obligations as per terms & conditions prescribed in the e-auctions.

19. If the buyer fails to lift the material as per delivery schedule as stated above, he shall be allowed to lift the material with application of Ground

Rent Charges @ 0.1% (zero point one percent) of the value corresponding to non-lifted quantity of the lot per day w.e.f. 1st calendar day till 15th

calendar days [after expiry of delivery schedule] unless stated otherwise.

25. Conditions of Delivery:

(a) The buyer shall remove the material corresponding to the lot purchased from the site of storage within the stipulated period as specified in the

Delivery Order. The buyer shall make his own arrangement for cutting/loading/transport. The buyer shall not be entitled to claim any

facilities/assistance/transport from NRL.

(b) If the buyer wish to take delivery of the items purchased through his representative, he shall authorize his representative by a ""Letter of Authority which shall be presented in original to the concerned Department of NRL.

(c) Delivery of respective lot shall be deemed to have completed only after issue of ""No Objection/No Due/Completion Certificate"" from the concerned Department of NRL.

26. In the event of lot basis auction, any material being found to be deficient in quantity, quality, size, measurement, number and weight or description

from those stated in the list published on the website, the buyer shall have no claim against NRL or the Auctioneer nor shall the purchaser/buyer be

entitled to seek any annulment of sale or claim for loss of profit, interest, damage or any other ground except for refund of a part of purchaser's

money for the "quantitative shortages" in delivery and he shall be bound to remove the same from the site as good purchased by him. The

weighments/units indicated in the catalogue/ list are tentative and no guarantees assured for the same. In case of unit basis, amount against deficient in

quantity only shall be refunded.

49. On perusal of Clause 19, it transpires that if the buyer fails to lift the material as per delivery schedule, he shall be allowed to lift the material with application of Ground Rent Charges @ 0.1% (zero point one percent) of the value corresponding to non-lifted quantity of the lot per day w.e.f. 1st calendar day till 15th calendar days, unless stated otherwise. In other words, the extension of time to lift the RPC is only on the failure of the buyer to lift the RPC as per the delivery schedule, that too with the application of Ground Rent Charges @ 0.1% (zero point one percent), unless stated otherwise. Therefore, the extension of upliftment of the RPC shall be as per the delivery schedule and in case of failure by the buyer, the same shall be allowed with application of Ground Rent Charges @ 0.1%.

50. It is seen that the respondent NRL has extended the upliftment and delivery time from 04.04.2023 to 15.05.2023, on the ground of Refinery Turnaround, which may be a reasonable ground for the respondent NRL, however, the BRD does not empower the respondent NRL authority to extend on its own except as per clause 19, much less stoppage of delivery for upliftment of the RPC.

51. Clause 25 provides, inter alia, that the buyer shall remove the material corresponding to the lot purchased from the site of storage within the stipulated period as specified in the Delivery Order. The Delivery Order prescribed that the material/RPC is to be lifted by 04.04.2023.

52. Clause 26 provides that in the event of lot basis auction, any material being found to be deficient in quantity, quality, size, measurement, number and weight or description from those stated in the list published on the website, the buyer shall have no claim against NRL or the Auctioneer nor shall the purchaser/buyer be entitled to seek any annulment of sale or claim for loss of profit, interest, damage or any other ground except for refund of a part of purchaser's money for the "quantitative shortages" in delivery and he shall be bound to remove the same from the site as good purchased by him. The weighments/units indicated in the catalogue/ list are tentative and no guarantees assured for the same. In case of unit basis, amount against deficient in quantity only shall be refunded.

53. The respondent NRL, apart from withholding/stoppage of the upliftment of the RPC, without there being any authority to the same, in my

considered view, the schedule of time for upliftment being lapsed, the contract gets terminated on the happening of such arbitrary stoppage by the respondent NRL. In stoppage/withholding of the upliftment of RPC, it amounts to quantitative shortage and deficient in quantity, for which the petitioners are entitled to be refunded.

54. In view of the above, I am of the considered opinion that the delivery schedule for RPC supply to the petitioners as per the delivery orders have lapsed and the contract of supply of RPC deemed expired and the NRL authorities are obligated to refund the security deposits and the balance purchase advance payment due to its failure/shortfall in providing the contractually stipulated quantity of RPC.

55. This court would agree that a duty is cast on the respondent NRL to ensure that the quality of RPC to be strictly in accordance with the BRD.

The quality of the RPC having being compromised while in the custody of the respondent NRL which has been brought to the notice of the respondent

NRL, the respondent NRL has failed to perform its promise and obligations to maintain the quality of RPC. The Petitioners have informed the NRL to

put an end to the contract on account of the depreciation of the quality of the RPC and also to refund the money for the RPC. The respondent NRL

has failed to perform its promise of providing the goods as per the quality in terms of the BRD and as such, in my view, the contract has been rendered void.

56. In view of the discussions made herein above, I am of the considered view that the petitioners have been able to demonstrate the arbitrary action

on the part of Respondent NRL. Thus, the impugned e-mail for resumption of upliftment of RPC vide dated 19.04.2023 is not sustainable.

Accordingly, the e-mail dated 19.04.2023, for resumption of the supply of RPC from the point of its stoppage/withholding on 25.03.2023, is hereby set

aside and quashed. Consequently, the petitioners are entitled to refund of the security deposits and balance purchase advance payments on account of failure/shortfall in providing the contractually stipulated quantity of RPC.

57. The writ petitions are allowed and disposed of, accordingly. However, no order as to costs.