

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

W.P.A. 13560 OF 2026
KALOMONI BASKI & ORS.
-Vs-
STATE OF WEST BENGAL & ORS.

With
W.P.A. 13565 OF 2026
KALOMONI BASKI & ORS.
-Vs-
STATE OF WEST BENGAL & ORS.

With
W.P.A. 13570 OF 2026
KALOMONI BASKI & ORS.
-Vs-
STATE OF WEST BENGAL & ORS.

With
W.P.A. 13574 OF 2026
KALOMONI BASKI & ORS.
-Vs-
STATE OF WEST BENGAL & ORS.

For the Petitioner:	Mr. S.N. Mookherjee, Sr. Adv. Mr. T.M. Siddiqui, Sr. Adv. Mr. Soumitra Chatterjee, Adv.
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For the Respondent Nos. 10 & 11:	Mr. Sanjay Saha, Adv. Mr. Raju Mandal, Adv.
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For the State:	Mr. Nilanjan Bhattacharjee, Sr. Standing Counsel. Ms. Jayita Dhar Chakraborty, Adv. Mr. Nilanjan Pal, Adv. Mr. Joy Ranjan Dhar, Adv.
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Hearing concluded on: 10.07.2026
Judgment on: 15.07.2026

PARTHA SARATHI SEN, J. : –

1. At the time of hearing it is submitted at the Bar that WPA 13560 of 2026, WPA 13565 of 2026, WPA 13570 of 2026 and WPA 13574 of 2026 are identical in nature and in all the four writ petitions identical questions of facts and laws are involved.
2. On consent of the parties, all the four writ petitions are taken up for hearing analogously and these writ petitions are tagged together and accordingly this Court proposes to dispose of the instant four writ petitions by a common judgment.
3. The facts are taken from WPA 13560 of 2026.
4. The subject matter of the writ petition being WPA 13560 of 2026 is the order dated 11.05.2026 as passed by the respondent no. 12 in Appeal Case No. 33 of 2025 (Kalomoni Baski vs. State of West Bengal) whereby and whereunder the said respondent no. 12 affirmed the order dated 16.07.2025 as passed by the respondent no. 5 authority in connection with Case No. M&M/01 of 2025 whereby and whereunder the said respondent no. 5 authority declined to extend the period of mining lease as has been originally executed between the predecessor-in-interest of the present writ petitioners and the respondent no. 4 authority for excavation of sand over the plot no. 01/2050 (B) covering an area

of 6.50 acre on the river bed of Mayurakshi in Mouza Kenduli under P.S.-Suri, Dist.- Birbhum (hereinafter referred to as the “plot in question”).

5. For effective adjudication of the instant lease some relevant facts are required to be dealt with in a nutshell and those are discussed hereunder in seriatim:-

- (i) Pursuant to issuance of Letter of Intent (LOI) for grant of mining lease for excavation of sand from the plot in question a registered deed of lease dated 14.08.2018 was executed between the predecessor-in-interest of the present writ petitioners as lessee and the Government of West Bengal as lessor for a period of 5 years. After execution of the said deed of lease the original lessee started mining activity over the plot in question by way of extraction and dispatch of sand being “minor mineral”.
- (ii) During the subsistence of the said lease the original lessee died and in his place the present writ petitioners being his legal heirs and representatives stepped into the shoes of the said original lessee and to that effect a registered deed of declaration dated 16.09.2020 was executed between the Government of West Bengal and the present writ petitioners whereby and whereunder the present writ petitioners were permitted to carry on mining activity over the plot in question in terms of the original deed of lease dated 14.06.2018.
- (iii) Since on account of untimely death of the original lessee (who died on 10.03.2020), the mining activity could not be carried out for sometime

- the respondent nos. 4 and 5 authorities on an approach made by the present writ petitioners have granted 197 days extension beyond the stipulated period of 5 years in order to allow the present writ petitioners to carry on the mining activity over the plot in question.
- (iv) On 24.02.2023 the writ petitioner no. 1 under cover of a letter requested the respondent no. 4 authority to grant further extension of time due to “*force majeure*” since according to the writ petitioner no.1, she could not carry on the mining activity over the property in question on account of outbreak of Covid-19 pandemic.
 - (v) Subsequently, on 16.04.2024 the writ petitioner no. 1 again requested the respondent no. 4 authority by writing a letter requesting him to extend the period of lease due to “*force majeure*” on account of outbreak of Covid- 19 pandemic as well as on account of stoppage of mining work from December, 2021 till March, 2022, due to abnormal water logging and flood like situation due to untimely release of water by Tilpara Barrage.
 - (vi) Since the said two representations dated 24.02.2023 and 16.04.2024 remained unattended, the writ petitioners approached this Court by filing WPA 25733 of 2024 which came to be disposed of by a coordinate Bench of this Court on 13.11.2024 whereby and whereunder the said coordinate Bench directed the respondent no. 5 therein to pass a reasoned order in connection with the

representation dated 16.04.2024 in accordance with law after giving an opportunity of hearing to the writ petitioners.

(vii) Pursuant to such order dated 13.11.2024 as passed by this High Court the respondent no. 5 passed his reasoned order dated 16.07.2025 in Case no. M&M/01 of 2025 whereby and whereunder the respondent no. 5 authority declined to pass a favourable order in favour of the writ petitioners.

(viii) The writ petitioners felt aggrieved and thus preferred an appeal being an Appeal Case No. 33 of 2025 (Kalomoni Baski vs. State of West Bengal) before the respondent no. 12 authority which disposed of the said appeal by its order dated 11.05.2026 affirming the order of the respondent no. 5 authority which is impugned in this writ petition.

6. In course of hearing Mr. Mookherjee, learned Senior Advocate appearing on behalf of the writ petitioner draws attention of this Court to page nos. 43 to 88 of the instant writ petition being a copy of the said registered deed of lease dated 14.06.2018. Drawing attention to the internal page nos. 3 and 16 of the said registered deed of lease, it is submitted by Mr. Mookherjee that from the said two pages of the copy of the lease deed it would reveal that the original lease was for 5 years and in the said deed of lease it has been categorically mentioned the minimum quantity of sand the lessee would have to extract from the plot in question per annum. For better appreciation this Court proposes to quote the relevant clause of the said deed of lease in verbatim and the same is as under:

“(b) The lessee shall extract and dispatch a minimum 35,820 cubic meters of SAND (name of mineral) from the leasehold area per annum.”

7. It is argued by Mr. Mookherjee that the aforementioned clause of the said deed of lease categorically indicates that the lessee under the terms and conditions of the said lease is obliged to extract and dispatch a minimum 35,820 cubic meter of sand. It is submitted by Mr. Mookherjee that by no stretch of imagination it can be said that the present writ petitioners being the lessee are not entitled to extract and dispatch more than the said minimum quantity. It is however submitted by Mr. Mookherjee that it is the specific case of the writ petitioners that on account of stoppage of mining activity for no fault of the present writ petitioners, the writ petitioners could not extract the said base quantity on account of “*force majeure*” as well as on account of release of stored water from Tilpara Barrage beyond the monsoon period.

8. Drawing further attention of this Court to internal page no. 33 of the said deed of lease it is argued by Mr. Mookherjee that the said deed of lease contained a clause “*failure to fulfil the terms of lease*” due to “*force majeure*” and the relevant recital under the said clause is also quoted hereinbelow in verbatim:

“Failure to fulfill the terms of lease due to “Force Majeure”

Failure on the part of the Lessee/ Lessees to fulfill any of the terms and conditions of this lease shall not give the State Government any claim against the Lessee/ Lessees or be deemed a breach of this lease, in so far as such failure is considered by the said Government to arise from force majeure, and if through force majeure the fulfillment by the Lessee/ Lessees of any of the terms and conditions of this lease be delayed, the period of such delay shall be

added to the period fixed by this lease. In this clause the expression “force Majeure” means act of God, war, insurrection, riot, civil commotion, strike, earthquake, tide, storm, tidal wave, flood, lightning, explosion, fire and other happenings, which the Lessee/ Lessees could not reasonably prevent or control.”

9. In course of his argument Mr. Mookherjee however did not dispute that on account of untimely death of the original lessee and on account of passage of time to complete the formality for substitution of the present writ petitioners as his legal heirs and representatives in connection with the lessee in question the mining activity over the property in question remained suspended for some time and on being approach made by the writ petitioners, 197 days extension has been granted in respect of the period of lease by the respondent nos. 4 and 5 authorities. It is however submitted by Mr. Mookherjee that that the respondent no. 5 authority while considering the representation of the writ petitioner no. 1 and while passing the reasoned order dated 16.07.2025 failed to visualize the true purport and implication of the term “*force majeure*”. It is further submitted by Mr. Mookherjee that the respondent no. 5 authority also miserably failed to appreciate that the writ petitioner could not carry out mining activity from the last week of December, 2021 to March, 2022 on account of untimely heavy water logging in the river bed though the said period is not a normal period of monsoon when mining activity remained suspended on account of environmental reason. Placing reliance upon a compilation being “Sustainable Sand Mining Management Guidelines, 2016” (“Guidelines” in short) it is argued by Mr. Mookherjee that as per the said guidelines no river bed mining would be permitted during rainy season and as per the self same

guidelines the period of monsoon in West Bengal extends from 10th June of a year to 15th October of the self same year.

10. It is further submitted by Mr. Mookherjee that the respondent no. 5 authority while passing the reasoned order for the reason best known to him most wrongfully came to a finding that since the lessee could extract the requisite quantity of sand in the entire lease period of 5 years as per the terms of the said deed of lease there cannot be any occasion to extend the period of lease.

11. In his next limb of submission Mr. Mookherjee took me to the impugned order dated 11.05.2026 as passed by the respondent no. 12 authority in the said appeal case. It is submitted by Mr. Mookherjee that the impugned order of appeal dated 11.05.2026 is a glaring example of non application of mind since the said appellate authority while disposing the said appeal most mechanically endorsed the view of the respondent no. 5 authority. It is further argued by Mr. Mookherjee that the respondent no. 12 authority also failed to visualize the actual impact of the pandemic Covid- 19 over the mining activity as carried on by the present writ petitioners over the plot in question. It is further submitted by Mr. Mookherjee that the respondent no. 12 authority ought to have held that Covid- 19 pandemic tantamounts to an act of God as has been held by the Hon'ble Supreme Court and the different High Courts and therefore, the clause "*force majeure*" as mentioned in the said deed of lease very much applies in connection to the said deed of lease. It is further submitted by Mr. Mookherjee that the respondent no. 12 authority ought to

have added the period of suspension of mining activity with the actual period of lease by applying “force majeure” clause and in not doing so, the decision making process of the respondent no. 12 has been vitiated for non-consideration of relevant materials as well as of law and thus, judicial intervention is very much warranted.

12. In support of his contention Mr. Mookherjee places his reliance upon the following reported decisions:

- (i) ***Mehra Jewel Palace Pvt. Ltd. vs. Miniso Life Style Pvt. Ltd. & Anr. [2022 SCC OnLine Del 1557]***
- (ii) ***Manoj Paliwal & Anr. vs. State of Rajasthan, through its Principal Secretary & Ors. [2024 SCC OnLine Raj 914]***
- (iii) ***Mamatha Theatre vs. State of Telengana & Ors. [2021 SCC OnLine TS 3113]***
- (iv) ***Lebeaupin vs. Richard Crispin & Co. [1920 Kings Division 714]***
- (v) ***Hardesh Ores (P) Ltd. vs. Hede & Co. [(2007) 5 SCC 614]***

13. Drawing further attention of this Court to the ground no. XIV of the memo appeal as preferred before the respondent no. 12 authority, it is further submitted by Mr. Mookherjee that the factual finding of the respondent no. 5 authority that the writ petitioners had excavated requisite quantity of sand from the property in question was assailed before the said appellate authority however, the said appellate authority did not make any venture to address the said issue which resulted miscarriage of justice in the decision making process

as well as for non-consideration of relevant materials available on record and thus, the order impugned is required to be inferred with in judicial review by granting reliefs to the writ petitioner in terms of the prayers as made in the instant writ petition.

14. Per contra, Mr. Saha, learned Advocate appearing on behalf of the respondent no. 10 Corporation and its instrumentalities at the very outset took me to page nos. 104 to 108 of the instant writ petition being a copy of the environmental clearance report dated 04.06.2018 as has been issued by District Level Environment Impact Assessment Authority, Birbhum (“Environmental Authority” in short). It is argued by Mr. Saha that on perusal of the said environmental clearance report dated 04.06.2018 it would reveal that the said Environmental Authority while considering the mining plan as has been submitted by the predecessor-in-interest of the present writ petitioners considered the aspect of feasibility of mining depending upon the mineral reserve in the river bed and the environmental impact in case of mining and excavation of sand and thus, set up a parameter and/or ceiling regarding production capacity to the extent of 35,820 cubic meter per annum. It is thus submitted by Mr. Saha that in view of fixing of such ceiling limit the writ petitioners are not entitled to carry on sand mining and excavation beyond the production capacity as has been fixed by the said Environmental Authority.
15. In his next limb of submission Mr. Saha submits further that the lease deed dated 14.06.2018 and/or its various clauses may not be viewed independently overlooking the aforementioned environment clearance report as

otherwise there may be every possibility of occurrence of environmental hazards due to excess excavation and sand mining. It is further submitted by Mr. Saha that for the sake of argument even if it is accepted that the writ petitioners' mining and excavation activity stood stalled for some days for some reason or other, however, the writ petitioners have not suffered any pecuniary loss since they could excavate requisite quantity of sand from the leased out area and thus, the writ petitioners are not entitled to the reliefs as prayed for. Placing reliance upon an unreported judgment dated 16.06.2026 as passed by a coordinate Bench of this Court in **WPA 3349 of 2026 (Ambey Niwas Pvt. Ltd. vs. The State of West Bengal & Ors.)** and judgment dated 27.11.2025 as passed by a Division Bench of this Court in **MAT 1304 of 2025 (Dilip Mondal vs. The State of West Bengal & Ors.)** it is submitted by Mr. Saha that the said coordinate Bench as well as the Division Bench while interpreting "force majeure" clause as available in the deed of lease consistently held that in the event the petitioner claims to have suffered loss for not being allowed to carry on the mining activities for a substantial period of the tenure of the lease, the remedy of the petitioner is to sue for damages before a competent Civil Court having jurisdiction. It is thus submitted by Mr. Saha that the respondent nos. 5 and 12 authorities are very much justified in passing their respective orders which may not be interfered with by issuance of appropriate writ/writs as prayed for.

16. Mr. Pal, learned Advocate appearing on behalf of the respondent State while adopting the argument of Mr. Saha draws attention of this Court to the

copy of the order dated 16.07.2025 as passed by the respondent no. 5 authority. It is argued by Mr. Pal that the respondent no. 5 while considering the representation of the writ petitioners categorically dealt with the various grievance of the writ petitioners under different heads and in doing so he had assigned logical reasoning for not entertaining the writ petitioners' grievance as has been ventilated before him by way of a representation dated 16.04.2024.

17. It is further argued by Mr. Pal that after substitution of the present writ petitioners in place and state of the original lessee the present writ petitioners made no venture to agitate their grievance regarding alleged stoppage of work of mining on account of "*force majeure*" and/or political unrest. It is further argued by Mr. Pal that by no stretch of imagination a political unrest comes under the periphery of the clause "*force majeure*".

18. In course of his reply Mr. Mookherjee placed his reliance upon the judgment as passed in the case of ***Confederation of Real Estate Developers of India (CREDAI) vs. Vanashakti & Anr.*** reported in ***(2026) 5 SCC 201***. It is argued by Mr. Mookherjee that in the case of ***Vanashakti (Supra)*** the Hon'ble Supreme Court while entertaining a review petition took a realistic approach by holding that in a changed circumstances the environmental clearance and the relevant notification may be modified in the event it is found that the restrictions as imposed by the Environmental Authority had a deterrent effect and in such a case the activity may be permitted to operate as otherwise it would create more pollution rather than protecting environment.

19. This Court has meticulously gone through the entire materials as placed before this court including the reported/ unreported decisions as cited from the Bar. This court has also given due consideration over the submissions of the learned Advocates for the contending parties.

20. Since in the instant writ petition, the findings of the appellate authority being the respondent no. 12 under Rule 51 of the West Bengal Minor Minerals Concession Rules, 2016 (“Rules of 2016” in short) is impugned in a judicial review under Article 226/ 227 of the constitution of India with a prayer for issuance of writ of certiorari commanding the respondents to produce all the records before this court in order to do substantial justice to the writ petitioner, this Court at the very outset proposes to look to the law of land relating to the cardinal principles of the law governing in the field of exercise of extraordinary jurisdiction under Article 226 of the Constitution where an administrative decision arising out of a contract concerning public authorities is impugned. In this regard, this Court proposes to place its reliance upon the judgment as passed in the case of **Subodh Kumar Singh Rathour vs. Chief Executive Officer** reported in **(2024) 15 SCC 461** wherein the Hon’ble Supreme Court expressed thus:

“57. Thereafter, this Court in its decision in M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd. [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] exhaustively delineated the scope of judicial review of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:

Scope of judicial review in matters pertaining to contractual disputes

57.1. This Court in *M.P. Power Management case* [*M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.*, (2023) 2 SCC 703] held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the Courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under: (*M.P. Power Management case* [*M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.*, (2023) 2 SCC 703] , SCC p. 763, paras 81-82)

“81. ... when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, *per se*, arbitrary.

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* [*Bareilly Development Authority v. Ajai Pal Singh*, (1989) 2 SCC 116] 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* [*Radhakrishna Agarwal v. State of Bihar*, (1977) 3 SCC 457] , may not continue to hold good, in the light of what has been laid

down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706] .

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.”

(emphasis supplied)

Exercise of writ jurisdiction in disputes at the stage prior to the award of contract

57.2. An action under a writ will lie even at the stage prior to the award of a contract by the State wherever such award of contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. In doing so, the courts may set aside the decision which is found to be vitiated for the reasons stated above but cannot substitute the same with its own decision. The relevant observations read as under: (M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] , SCC p. 764, para 82.4)

“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 [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 : AIR 1979 SC 1628]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] .”

(emphasis supplied)

Exercise of writ jurisdiction after the contract comes into existence

57.3. This Court in M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] held that even after the contract comes into existence an action may lie by way of a writ to either: (I) obviate an arbitrary or unreasonable action on the part of the State, or (II) to call upon it to honour its obligations unless there is a serious or genuine dispute as

regards the liability of the State from honouring such obligation. Existence of an alternative remedy or a disputed question of fact may be a ground to not entertain the parties in a writ as long as it is not being used as smokescreen to defeat genuine claims of public law remedy. The relevant observations read as under: (M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] , SCC pp. 764-65, para 82)

“82. ... 82.5. 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 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 alternative 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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India)

Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22 : (1997) 104 STC 78] , by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213]].

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 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."

(emphasis supplied)

Exercise of writ jurisdiction after termination or breach of the contract

57.4. *A relief by way of a writ under Article 226 of the Constitution will also lie against a termination or a breach of a contract, wherever such action is found to either be palpably unauthorised or arbitrary. Before turning away the parties to the remedy of civil suit, the courts must be mindful to see whether such termination or breach was within the contractual domain or whether the State was merely purporting to exercise powers under the contract for any ulterior motive. Any action of the State to cancel or terminate a contract which is beyond the terms agreed thereunder will be amenable to the writ jurisdiction to ascertain if such decision is imbued with arbitrariness or influenced by any extraneous considerations. The relevant observations read as under: (M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] , SCC pp. 765-66, para 82)*

"82. ... 82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any

necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] , if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternative remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] . It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

82.12. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of

U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.”

(emphasis supplied)

Other relevant considerations for exercise of writ jurisdiction

57.5. Lastly, this Court in *M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703]* held that the courts may entertain a contractual dispute under its writ jurisdiction where: (I) there is any violation of natural justice, or (II) where doing so would serve the public interest, or (III) where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under: (*M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703]* , SCC p. 766, para 82)

“82. ... 82.13. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.

82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706]).”

(emphasis supplied)

“**60.** Thus, the demarcation between a private law element and public law element in the context of contractual disputes if any, may be assessed by ascertaining whether the dispute or the controversy pertains to the consensual aspect of the contract or tender in question or not. Judicial review is permissible to prevent arbitrariness of public authorities and to ensure that they do not exceed or abuse their powers in contractual transactions and requires overseeing the administrative power of public authorities to award or cancel contracts or any of its stipulations.

61. Therefore, what can be culled out from the above is that although disputes arising purely out of contracts are not amenable to writ jurisdiction yet keeping in mind the obligation of the State to act fairly and not arbitrarily or capriciously, it is now well settled that when contractual power is being used for public purpose, it is certainly amenable to judicial review.”

“**70.** The dictum as laid in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] is that the judicial power of review is exercised to rein in any unbridled executive functioning. It was observed that the restraint has two contemporary manifestations viz. one is the ambit of judicial intervention and the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action. It was held that the principle of judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It was held that the principle of judicial review would apply to the exercise of contractual powers by the government bodies in order to prevent arbitrariness or favouritism. It was held that the duty of the court is to confine itself to the question of legality and its concern should be whether a decision-making authority exceeded its powers; whether it committed an error of law or committed a breach of the rules of natural justice or

reached a decision which no reasonable tribunal would have reached or, abused its powers. The grounds upon which an administrative action can be subjected to judicial review are classified as illegality, irrationality and procedural impropriety. In that very decision, while deducing the principles from various cases referred, it was held that the modern trend points to judicial restraint in administrative action; that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made; that the court does not have the expertise to correct the administrative decision and if a review of the administrative decision is permitted, it will be substituting its own decision, without the necessary expertise which itself may be fallible; that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract; and, that the Government must have freedom of contract i.e. a free-play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] principle of reasonableness, but must be free from arbitrariness not affected by bias or actuated by mala fides. Moreover, quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

[Emphasis Supplied]

21. Keeping in mind the scope of judicial review as enunciated by the Hon'ble Supreme Court in the above quoted judgment viz., **Subodh Kumar Singh Rathour (Supra)** if I look to the factual aspects of this Court, it appears that after issuance of Letter of Intent (LOI) the writ petitioner approached Environmental Authority for granting environmental clearance for the proposed sand mining in the relevant plot of land over the river bed of Mayurakshi. It appears from the report dated 04.06.2018 that the said Environmental Authority prior to issuing environmental clearance to the original lessee

considered the quantum of mineral reserve in the relevant plot over the river bed of Mayurakshi and after considering the environmental impact on account of proposed mining granted environmental clearance to the original lessee for production capacity of 35,820 cubic meter per annum. No material is forthcoming that prior to the execution of the registered deed of lease the original lessee has challenged such environmental clearance. On the other hand, it has been noticed by this Court that on submission of the said environmental clearance with the respondent no. 4 authority the said mining lease dated 14.06.2018 was executed.

22. Admittedly, the relevant clause of the said deed of lease says that the lessee would extract and dispatch a minimum 35,820 cubic meters of sand from the leasehold area per annum and placing reliance on such clause Mr. Mookherjee contended that the present writ petitioners are entitled to extract more. In considered view of this Court such argument of Mr. Mookherjee appears to be attractive at the first blush however, on perusal of environmental clearance report dated 04.06.2018 it appears that the Environmental Authority restricted the lessee and/or his legal representatives to extract sand upto 35,820 cubic meter per annum and such finding was never challenged either by the original lessee or by the present writ petitioners at any point of time. Rather it appears from ground no. XIV that the present writ petitioners while preferring an appeal before the respondent no. 12 authority specifically contended that as per the said deed of lease they could extract 63,24,860 cubic feet equivalent to 1,79,100 cubic meter in 5 years that is 35,820 cubic meter

per annum though they have actually extracted 55,00,000 cubic feet of sand from the said sand block.

23. In view of such, this Court is constraint to hold that the contention of Mr. Mookherjee that the writ petitioners could extract more quantity of sand as have been mentioned in the environmental clearance report dated 04.06.2018 and/or the said registered deed of lease dated 14.06.2018 has no leg to stand upon.

24. At this juncture, if I look to the order dated 16.07.2025 as passed by the respondent no. 5 authority while disposing the representation of the writ petitioners as submitted on 16.04.2024 it reveals that the said respondent no. 5 authority on careful consideration of the materials as available in the relevant file came to a factual finding that the present writ petitioners had already extracted total quantum of sand from the leased out area. In appeal the said appellate authority being respondent no. 12 came to a concurrent finding regarding extraction of the stipulated annual quantity of sand by the writ petitioners though some misprint occurred regarding numerical figures, may be on account of typographical error/ omission.

25. In course of his argument, Mr. Mookherjee though contended that the said appellate authority failed to appreciate the fact that the writ petitioners on account of suspension of mining work could extract lesser quantity of sand however, this Court sitting in writ jurisdiction is not supposed to act as an appellate Court and, therefore, is not entitled to re-appreciate the evidence based on factual findings as arrived by the two authorities being respondent

nos. 5 and 12 since review or reweigh the evidence is not permissible in judicial review unless sufficient materials have been placed that such concurrent findings are palpably erroneous.

26. For the sake of argument even if it is accepted that the mining activity of the writ petitioners over the leased out plot was stalled on account of various reasons beyond the control of the writ petitioners may be on account of “act of God” however, keeping in mind that the remedies under Article 226 of the Constitution of India is founded on legal injury if I again look to the factual aspects as involved in the instant writ petition, it appears to this Court that the writ petitioners before the respondent nos. 5 and 12 authorities have miserably failed to prove that they had suffered legal injury on account of suspension of mining activity in view of the fact that both the aforementioned authorities on careful perusal of the entire materials on record came to hold that the writ petitioners had already extract requisite quantity of sand in terms of the deed of lease as well as in terms of the environmental clearance as given by the Environmental Authority.

27. The argument of Mr. Mookherjee that the environmental clearance is not sacrosanct and thus, parameters for environmental management plan may be changed on account of change of circumstances in view of the reported decision of the Hon’ble Supreme Court in the case of ***Vanashakti (Supra)*** appears to be not convincing in view of the fact that no case has been made out on behalf of the writ petitioners that in the event the ceiling of extraction as has been fixed by the Environmental Authority is maintained, it would have an

adverse impact on the environment on account of some changed circumstances.

28. In view of the discussion made hereinabove, this Court thus considers that applicability and/or non-applicability of “*force majeure*” clause as available in the said registered deed of lease become insignificant and thus this Court finds no reason to deal with the reported judgments as cited on behalf of the writ petitioners to substantiate that suspension of mining activity at the relevant sand block occurred on account of “act of God” and thus, the writ petitioners are entitled to get the benefit of the clause “*force majeure*”.

29. In view of the discussion made hereinabove this Court finds no reason to interfere with the order impugned. WPA 13560 of 2026 is thus dismissed.

30. With the dismissal of WPA 13560 of 2026 the other writ petitions being WPA 13565 of 2026, WPA 13570 of 2026 and WPA 13574 of 2026 are also dismissed.

31. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)