HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 14997/2024

Jaipur Development Authority, Having Its Office At R.K. Vyas Bhavan, JLN Marg, Jaipur (Rajasthan) through Its Authorized Signatory Mr. Deepak Mathur.

----Petitioner

Versus

TPI-Sucg Consortium, (Consortium Of Tata Projects Ltd. And Sucg International Engineering Co. Ltd.), 2nd Floor, Administrative Building, RIICO Industrial Area, Badh Dhokala, Taruchhaya Nagar, Tonk Road, Jaipur-302019.

----Respondent

For Petitioner(s)	:	Mr. Anuroop Singhi, Mr. Devansh Sharma, Ms. Palak Saraswat & Mr. Bhavya Kala
For Respondent(s)	:	Mr. K.K. Sharma, Sr. Adv. asst. by Mr. Shivangshu Naval & Ms. Akansha Naval

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HON'BLE MR. JUSTICE SUDESH BANSAL

<u>Order</u>

<u>RESERVED ON</u>	**October 22nd, 2024**
<u>PRONOUNCED ON</u>	**December 19th, 2024**
<u>BY THE COURT</u>	

1. Heard learned counsel for both parties at length and perused the record carefully.

2. In instant civil writ petition filed by petitioner- Jaipur Development Authority (for short "JDA") under Article 227 of the Constitution of India, challenge has been made to the order dated 24.04.2024, passed by the Commercial Court No.2, Jaipur Metropolitan II, on an application filed by petitioner under Section 36 of the Arbitration and Conciliation Act, 1996 (for short "A&C

Act, 1996"), seeking to stay the arbitral award dated 13.06.2023 until decision of application filed under Section 34 of the A&C Act, 1996, whereby and whereunder the Commercial Court has stayed execution of arbitral award, subject to deposition of 50% of the awarded amount by the petitioner. It has further been observed by the Commercial Court in the order impugned that after deposition of 50% of the awarded amount by petitioner- JDA, same be kept in four FDRs of equivalent amount, for a period of one year, and on filing of application by the claimant for withdrawal of such deposited amount, same would be considered and decided separately.

3. Learned counsel for petitioner- JDA vehemently argued that the arbitral award is patently illegal and is in clear conflict with the basic notions of morality and justice as also in contravention to the fundamental policy of Indian law, hence an application under Section 34 of the A&C Act, 1996 has been filed to set aside the award. Learned counsel argued that in the award, claimant has been held entitled to receive the payments of construction work, whereas admittedly construction work in the submergence areas, has not been done, hence respondent-claimant should not be held entitled to claim payments of such construction work, which in-fact was never done by the respondent-claimant at site. As far as payments of the other works of project are concerned, same have already been released by the JDA. Learned counsel pointed out that the total cost of design build phase of the project was of Rs.1470.85 Crore and the disputed amount is only of Rs. 52,28,38,351.86/- (about more than 52.28 Crores). Learned

counsel urged that the Commercial Court, while putting the condition of pre-deposit of 50% of awarded amount for operating stay of arbitral award, has exercised its discretionary jurisdiction arbitrarily and injudiciously, as much as put such condition, without pondering over the real controversy behind withholding of such amount by the JDA and the petitioner, being a body of Government, may also be exempted from furnishing a security for the awarded amount in terms of Order 27 Rule 8-A CPC. Learned counsel submits that instead of directing the petitioner to deposit 50% of the awarded amount, the award ought to have been stayed, unconditionally. Learned counsel submits that although in the instant case, exceptional circumstances exist to stay the arbitral award unconditionally. Nevertheless, learned counsel for petitioner- JDA, during course of argument, offered and agreed to deposit a solvent security for 50% of the arbitral award in form of furnishing an FDR of a nationalised bank before the Court, instead of pre-deposit of cash money in Court. Thus, learned counsel has prayed to set aside/ modify the condition of pre-deposition of 50% of the arbitral award for operating the stay on the execution of the award.

To buttress his contentions, learned counsel for petitioner- JDA has placed reliance on following judgments:-

(i) **Ecopack India Paper Cup Pvt. Ltd. Vs. Sphere International [(2018) SCC OnLine Bom 540]**, which was affirmed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.16605/2018] vide order dated 23.07.2018;

ii) **<u>Pam Developments Private Limited Vs. State of West Bengal [(2019) 8 SCC 112]</u>** &

iii) **<u>Sihor Nagar Palika Bureau Vs. Bhabhlubhai Virabhai & Co. [(2005) 4 SCC 1].</u>**

4. Per contra, learned Senior Counsel appearing on behalf of respondent-claimant countered the contentions of learned counsel for petitioner, stating *inter alia* that the contract of the design build project was lump sum a "turnkey project" and further the JDA had issued commissioning certificate dated 09.12.2022 for completion of project work, hence after taking into consideration all such factual matrix, the Arbitral Tribunal has passed the award dated 13.06.2023, declaring that the deductions of payments of claimant by JDA for invoices, amounting to Rs.52.28 Crore, on account of not carrying out construction work in the submergence areas of the project, are untenable and held that the claimant is entitled for payments of such invoices. Learned Senior Counsel has further submitted that the Commercial Court has passed stay order in exercise of its judicial discretion and that stay order does not warrant any interference by the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India. Hence, this writ petition has no fate and is liable to be dismissed.

To buttress his contentions, learned Senior Counsel for respondent-claimant has placed reliance on following judgments:-

(i) **<u>Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited [(2020) 15 SCC 706]</u>**, followed in case of **<u>Navayuga Engineering Company Vs. Bangalore</u>**

Metro Rail Corporation Limited [(2021) SCC OnLine SC 469];

(ii) **Toyo Engineering Corporation Vs. Indian Oil Corporation Limited [MANU/ SCOR/ 68258/2021]** &

(iii) **Sepco Electric Power Construction Corporation Vs. Power Mech Projects Ltd. [(2022) SCC OnLine SC 1243]**.

5. Heard. Considered.

6. It is desirable and necessary to recapitulate the relevant facts as culled out from record, in order to consider and decide the issue involved in the present writ petition on merits.

7. The present matter arises out of a project of rejuvenation of *Amaanishaah Naala*, commonly known as "Dravyavati River Rejuvenation Project", which was initiated by the Government of Rajasthan in the Jaipur City, to convert the well known *Amaanishaah Naala* into a river under the Transformation of Urban Infrastructure Projects. It appears from record that a company Tata Projects Limited (for short "TPL") in collaboration and partnership with Shanghai Urban Construction Group, China (for short "SUCG"), with the support of JDA, conducted a preliminary field survey in the year 2014 and an Expression of Interest (EOI) to develop the project was submitted by TPL before the Department of Urban Development & Housing (UD&H) of Government of Rajasthan. Thereafter, JDA under the instructions of the Government of Rajasthan, asked TPL to submit Detailed Project Report (for short "DPR") and financial proposal in respect of said project, in terms of Swiss Challenge Guidelines and finally,

after deliberations on the proposed DPR, final DPR was approved by the Government of Rajasthan on 14.10.2015.

8. It has been projected by the petitioner- JDA before this Court that in furtherance to the final approved DPR, JDA advertised notice inviting bids, pursuant to which although other prospective bidders participated in the bid process, but TPL-SUCG Consortium (respondent herein) only submitted the bid, to develop the project proponents under the Swiss Challenge Method. The project was divided in two parts i.e. Part A- Design Build Phase & Part B- Operation and Maintenance (O&M) for 10 years. After finalizing the financial bid, a Letter of Acceptance was issued by the JDA in favour of respondent on 04.03.2016 and a written contract came to be executed in respect of such project, pertaining to rejuvenation of Dravyavati River, on 18.03.2016 between parties.

9. The dispute in the present writ petition, pertains to Part A of the project viz. Design Build Phase, which was moduled as "Turnkey Project". The final financial bid for Part A of such project was settled against Rs.1470.85 Crores. Part B of the project viz. Operation & Maintenance services was for a period of ten years against Rs.206,08,32,280/- (i.e. 206.08 Crores) (Annual cost of Rs.20,60,83,228/- x 10 years).

10. It has been stated that the DPR was made part of the contract, which consists different sections. The working drawings suggest to carry out continuous construction in the canal, including the submergence areas, but the fact & reality is that no construction work was carried out in the submergence areas of three dams i.e. i) Sikar Dam Area, ii) Gular Dam Area & iii)

Ramchandrapura Dam Area. However, in the invoices raised by respondent, bills were raised to make payment showing that the construction work in the submergence areas, has also been done without any break, but indeed the reality is that no construction work in the above referred three submergence areas, was done.

11. It has also been stated that in order to ensure payment in terms of GCC and PCC, billing breakup was envisaged in the contract and the milestones to complete each work were bifurcated into different small components and sub-components and the payments were to be released after approval of billing breakup and verifying the completion of milestone.

12. The clinching point of controversy is that since no construction work was carried out in the submergence areas, the payments of billing breakup of such submergence areas, were rightly withheld by the JDA, moreso when the payments for other works done in project of Part A, have been released.

13. The issue of withholding payments of invoices submitted by the respondent-claimant, in respect of construction work in the submergence areas of three dams referred hereinabove, was raised by the respondent and claim was made before the Dispute Adjudication Board (DAB). But DAB rejected the claim of respondent vide order dated 07.05.2020.

14. Thereafter, it appears that the respondent-claimant invoked the arbitration clause, in respect of subject matter of claim raised before the DAB and after serving a legal notice, filed an Arbitration Application No.105/2021 before the Rajasthan High Court, Jaipur.

The High Court constituted an Arbitral Tribunal to adjudicate the dispute.

15. It is noteworthy that since on account of non-completion of each milestone, a commissioning certificate was not issued by the petitioner- JDA to respondent, another issue was cropped up by the respondent in respect of not complying with Part B of the project work, which is with regard to O&M services, by the respondent and the performance of contract, in respect of Part B, was deliberately abandoned by the respondent.

It has been submitted that Part B of the project i.e. O&M services, includes treatment of waste water, cleaning of river bed, running operations of Sewage Treatment Plants (STPs), cleanings wastes from the river water etc., therefore, on account of abandonment of O&M services by the respondent, the areas of Jaipur City, through which Dravyavati River was crossing, started to stink badly and even at one point of time, respondent terminated the contract of O&M services unilaterally on 23.09.2022. In such eventualities, a supplementary agreement dated 02.12.2022 was entered into between the JDA and respondent with incorporation of certain additional terms & conditions to the original contract dated 18.03.2016. In furtherance thereto, a commissioning certificate for completion of work was issued by the JDA on 09.12.2022, in terms of Clauses 11.5 & 11.7 of the supplementary agreement.

16. In the pending proceedings of Arbitration before the Arbitral Tribunal, the commissioning certificate dated 09.12.2022 was produced by the respondent-claimant and an impression was

given by the respondent-claimant that since project has been moduled into a turnkey project and JDA has issued the commissioning certificate, which itself proves the completion of project of Part A viz. design build phase, hence withholding of payments of claimant by the JDA for the invoices of construction work in the submergence areas of three dams, is an arbitrary act of petitioner- JDA.

17. It has been stated that the Arbitral Tribunal could not appreciate the backdrop of circumstances, under which the commissioning certificate dated 09.12.2022 was issued by JDA. The Arbitral Tribunal also could not consider the relevant clauses of supplementary agreement, whereunder the commissioning certificate was issued by the JDA, which indeed is confined only in respect of the work already completed. Learned counsel for JDA submits that such commissioning certificate nowhere approves and verifies the construction work in the submergence areas. Moreover, it is an undisputed fact that no construction was made by claimant in the submergence areas, however, respondent succeeded in the arbitration proceedings, which culminated in passing of arbitral award dated 13.06.2023 by the Arbitral Tribunal, in favour of respondent-claimant in following terms:-

Claim Description	***Claim Amount Allowed***
Claimant's entitlement towards the untenable deductions made by the Respondent against the Claimant's invoices	*Rs. 52,28,38,351.86/- (exclusive of taxes) (About 52.28 Crore)*
Pre-award Interest @ 6%	*From 03.11.2020, that is, 56 days after the Claimant submitted its invoice(s) till the date of the Award*

Legal Costs incurred by the Claimant	*Rs. 50,00,000/- (fifty lakhs)*

18. The arbitral award has been challenged by the petitioner, by means of filing an application under Section 34 of the A&C Act, 1996, seeking to set aside the arbitral award dated 13.06.2023 and such application is pending before the Commercial Court, for adjudication on merits. During course of and until decision of the application u/s. 34 of the A&C Act, 1996, the Commercial Court, vide order dated 24.04.2024, has stayed the execution of the arbitral award dated 13.06.2023, on condition of deposition of 50% of the awarded amount by the petitioner- JDA and such stay order dated 24.04.2024, passed by the Commercial Court, has been questioned by the petitioner- JDA in the instant writ petition.

19. The issue that falls for consideration before this Court in the instant writ petition lays within a narrow compass as to whether in the given facts and circumstances of the present case, imposition of condition against JDA to deposit 50% of the awarded amount by the Commercial Court to operate the stay of execution of arbitral award dated 13.06.2023, is judicious exercise of discretion, within the scope of Section 36(3) of the A&C Act, 1996, having due regard to Order 41 Rule 1(3) & Rule 5 of CPC read with Order 27 Rule 8-A of CPC and as to whether the conditional stay order, passed by the Commercial Court, requires any interference by the High Court.

20. As far as merits of the application u/s. 34 of the A&C Act, 1996 filed by petitioner- JDA to set aside the arbitral award is

concerned, this Court does not want to enter into or deal with the merits of the grounds, on which the arbitral award has been put to challenge by the petitioner, since same may prejudice the case of either of parties before the Commercial Court. Suffice is to observe that the Commercial Court obviously acknowledged a strong *prima facie* case in favour of petitioner- JDA to stay the execution of arbitral award during course of adjudication of application u/s. 34 of the A&C Act, 1996, so to that extent, the order impugned is not under challenge by either side. Challenge to the impugned order is confined to the condition of directing the petitioner- JDA to deposit 50% of awarded amount to operate the stay order.

21. It is true that the project in question was moduled into a turnkey project and the cost of Part A of the project viz. design build phase, was of Rs.1470.85 Crores, but petitioner- JDA withheld only amount of Rs.52,28,38,351.86/- (about 52.28 Crores only), that too on the reasoning that the construction work in the submergence areas of three dams i.e. i) Sikar Dam Area, ii) Gular Dam Area & iii) Ramchandrapura Dam Area, which was proposed to be done in the DPR and was also shown in the drawings of project as also in the invoices for such work, furnished by the respondent-claimant, but no construction work at site was done. Hence, the payments of invoices in respect of the construction work in such submergence areas, were not cleared by JDA and all other invoices, except the invoices of withheld amount, which is about more than Rs. 52.28 Crores only, out of total cost of Rs.1470.85 Crores of the project, have been

acknowledged by JDA and payments have been released by JDA to respondent-claimant.

It is worthy to note that it is not a case of respondent-claimant that construction work in the submergence areas has been done, but the plea of respondent is that since the contract was a turnkey project against a lump-sum amount and further a commissioning certificate has been issued by the JDA, therefore, the award has rightly been passed by the Tribunal, taking into consideration all these factors. This Court finds that although the Arbitral Tribunal has passed award in favour of respondent-claimant, declaring its entitlement for the withheld amount of Rs.52.28 Crores, however, the award is under challenge and all such issues are yet to be considered and decided on merits by the Commercial Court, hence such plea touches the merits of case and this Court does not propose to deal with the merits of pleas so urged, lest it would prejudice the hearing of application u/s. 34 of the A&C Act, 1996, independently by the Commercial Court.

22. This Court finds that as far as making out a strong *prima facie* case for staying the arbitral award by the petitioner- JDA is concerned, petitioner- JDA has succeeded in establishing a strong *prima facie* case in its favour. The Commercial Court too is convinced about a strong *prima facie* case in favour of JDA that is why the execution of the arbitral award has been stayed, but the Commercial Court has not assigned justified and sound reasonings for putting a condition against petitioner- JDA to deposit 50% of the awarded amount, for operating stay against arbitral award. The Commercial Court *ex-facie* failed to ponder over the aspect

that as to why the petitioner may not be permitted to furnish a sufficient security, instead of asking for deposition of amount in cash before the Court.

23. This Court finds that the Commercial Court could not ponder over the provision of Section 36(3) of the A&C Act, 1996, which suggests that the Court shall have due regard to the provisions, for grant of stay against a money decree, under the provisions of the Code of Civil Procedure, 1908. The provision of Order 41 Rule 1(3) CPC provides that in an appeal against the decree for payment of money, the appellant shall either deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit. The provision of Order 41 Rule 5(5) CPC also suggest to make deposition by furnishing security, as specified in sub-rule (3) of Rule 1.

24. This Court finds that the Commercial Court failed to consider the genesis of passing arbitral award, which may not be construed as a decree for money in true sense, but the award pertains to release of payment by the JDA to the respondent for that construction work, which was admittedly never carried out by the respondent at site. JDA is a Government body and the work of rejuvenation of *Amaanishaah Naala* into a Dravyavati River is a project of Government, for the purpose of beautification of Jaipur city and launched in the greater interest of public at large towards development of urbanization of Jaipur City. Thus, virtually, the matter pertains to release of the government money, which is indeed public money in real sense. *Prima facie,* permitting to release amount in question, is tantamount to unjust enrichment of

respondent-claimant, since it would mean payment for that construction work, which indeed admittedly has not been done in reality. So, the Commercial Court ought to have considered all these factors and more particularly the genesis of passing the award, before putting such a condition of pre-deposit of 50% of the awarded amount by JDA. Hence, it is apparent that the Commercial Court put such condition of pre-deposit in a mechanical and routine manner as much as without due application of judicial mind and without judicious exercise of its discretion.

25. Although, petitioner is a Government body and as per Order 27 Rule 8-A of CPC, no security as mentioned in Rule 5 of Order 41 CPC is required to be furnished by the Government, but the Hon'ble Supreme Court in case of **Pam Developments Private Limited** (Supra) has observed that the provision of Order 27 Rule 8-A of CPC does not take away the powers conferred on the Court to impose condition u/s. 36(3) of A&C Act, 1996, while granting a stay against the arbitral award. The Apex Court in Para No. 28, has held as under:

> *"28. Section 36 of the Arbitration Act also does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of Section 34 of the Arbitration Act. Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay Under Section 36 filed by the Government in proceedings Under Section 34 of the Arbitration Act."*

Nevertheless, learned counsel for petitioner- JDA, during course of arguments, has offered to furnish solvent security, equivalent to 50% of the awarded amount, by way of submitting an FDR instead of insisting for deposition of cash amount before the Court.

26. This Court finds that it is not a case of respondent-claimant that in the event of dismissal of application under Section 34 of the A&C Act, 1996 and affirming the award, the awarded amount is not possible to be recovered from the petitioner- JDA.

27. It is worthy to note here that respondent-claimant has not challenged the impugned stay order for modification of order to direct the JDA to deposit full awarded amount, instead of only 50% of awarded amount.

28. Thus, having considered the conspectus of entire factual matrix, so also having considered the relevant provisions of law, the Commercial Court ought to have appreciated all these aspects of the matter and a balance of interest and equity between both the parties should have been maintained. The Commercial Court, thus, committed jurisdictional error in exercising its discretion arbitrarily, mechanically and injudiciously, while putting the condition of pre-deposit of 50% of awarded amount by the JDA, to stay the execution of arbitral award.

29. In the opinion of this Court, the Commercial Court, in the peculiar facts and circumstances of the present case, ought to have permitted the petitioner- JDA to furnish security instead of insisting on deposition of 50% of the awarded amount in cash before the Court. To this extent, the Commercial Court has

committed jurisdictional error in exercise of its discretionary powers, that too, condition has been saddled upon the JDA, without application of judicious mind and without assigning proper reasonings, hence the impugned order warrants interference/ modification to this extent only.

30. In case of **Navayuga Engineering Company** (Supra) referred by the learned Senior Counsel for respondent, the Hon'ble Supreme Court, while referring to a judgment delivered in case of **Deep Industries Limited** (Supra), observed that the High Court under Article 226 & 227 of the Constitution of India, should be extremely circumspect in interfering with orders passed under the A&C Act, 1996 and such interference should be in exceptional circumstances and in rare cases.

Having considered the peculiar facts of case at hand and the genesis of the arbitral award, coupled with the admitted position that no construction in the submergence areas was made by the respondent-claimant, yet payment of invoices for such construction has been awarded, this Court finds that exceptional circumstances exist to modify the condition of stay order by converting the direction to deposit 50% of the awarded amount in cash before the Court, into permitting the JDA to furnish a security by way of FDR of a nationalised bank, equivalent to the 50% of the awarded amount. Such interference in the stay order would serve interest of justice so also is necessary to maintain balance of interest and equity between both the parties.

31. In case of **Sepco Electric Power Construction Corporation** (Supra), the Hon'ble Supreme Court considered the

scope of grant of interim relief under Sections 9 and 36 of the A&C Act, 1996. In respect of grant of stay under Section 36 of the A&C Act, 1996, the Apex Court, in relevant paragraphs i.e. Para Nos.28, 29 & 30, held and observed as under:-

> *"28. Once an application under sub-section (2) of Section 36 is filed for stay of operation of the arbitral award, the Court might subject to such conditions as it may deem fit, grant stay of the operation of such award, for reasons to be recorded in writing. The Court is empowered to impose such conditions as it might deem fit and may grant stay of operation of the award subject to furnishing of security covering entire amount of the award including interest.*
>
> *29. The proviso to Section 36(3) of the Arbitration Act, makes it clear that while considering an application for grant of stay in the case of an arbitral award for payment of money, due regard has to be given to the provisions for grant of stay of a money decree under the provisions of the CPC.*
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> *30. The proviso to Section 36(3) further stipulates that where the Court is satisfied that a prima facie case is made out that (a) the arbitration agreement or contract which is the basis of the award or, (b) the making of the award was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 of the award."*

32. In case of **Sihor Nagar Palika Bureau** (Supra), the Apex Court permitted the appellant- judgment debtor to furnish security instead of deposit the decree amount in the court, where appeal was filed against the money decree by the Sihor Nagar Palika. While dealing with the provisions of Order 41 Rule 1(3) CPC and Order 41 Rule 5(5) CPC, imposing a condition for deposit of decree amount or furnish security, it was observed that discretion is conferred on the appellate Court to direct either deposit the amount disputed in appeal or to permit such security in respect

thereof. It was further observed that the discretion of the appellate Court must be exercised judiciously and not arbitrarily, depending on the facts & circumstances of given case.

33. This Court finds that it is a fit case where in order to meet ends of justice and in order to maintain balance & equity between the parties, interference in the impugned order to the limited extent as indicated hereinabove, is warranted by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. This Court expects from the Commercial Court, that in such type of matters, having element of public interest issues, to exercise its discretionary powers judiciously and with due application of mind and not just in a mechanical and routine manner, that too without assigning reasonings and without appreciating all aspects of the matter.

34. For the reasons mentioned hereinabove, the impugned order dated 24.04.2024 deserves to be modified in the manner that petitioner- JDA is permitted to furnish a security, in form of FDR of a nationalised bank, instead of deposition of 50% of the awarded amount in cash before the Commercial Court and the stay order dated 24.04.2024, passed by the Commercial Court, shall become operative, only after furnishing the security by the JDA in form of FDR of a nationalised bank, equivalent to the 50% of the awarded amount, before the Commercial Court.

35. As a result, the impugned order dated 24.04.2024 stands modified in the terms indicated hereinabove in Para No.34 and accordingly, instant writ petition along with all other pending application(s), if any, stand disposed of.

36. It is hereby made clear that any observations/ findings of this Court will not prejudice the case of either of the parties and the application u/s. 34 of the A&C Act 1996, pending before the Commercial Court shall be considered and decided on its own merits, without being influenced by this Order.

37. But before parting with, this Court deems it just and proper to take a judicial notice that the issue of cleaning, maintenance and operation of the project, pertaining to rejuvenation of *Amaanishaah Naala* and converting the same into Dravyavati River, involves public interest as well, apart from being merely a contract between petitioner- JDA and respondent- Company.

38. It is noteworthy that the project of rejuvenation of *Amaanishaah Naala* and converting the same into Dravyavati River, was obviously started by the Government of Rajasthan, with a noble object to move a step forward towards development of urbanization and beautification of the Jaipur City in the public interest. It is certainly a matter of public concern that the operation, maintenance and cleanliness of Dravyavati River should be held continuously and regularly. Part-B of the project pertains to operation and maintenance services, which includes treatment of waste water, cleaning of river bed, running operations of Sewage Treatment Plants (STPs), cleaning wastes from the river water etc. In this project, Government of Rajasthan has been investing huge amount, which in figure goes to crores of rupees. Such Government fund certainly is a public money, which has been invested, obviously for the benefit and in the interest of public at large. In this way, Part B of the project, pertaining to

operation and maintenance, has direct nexus with the public at large, who is the ultimate beneficiary of the rejuvenation project and is one of the stakeholders for the successful operation of the project and its timely maintenance.

39. Since, it has been observed and facts have come on record that at one point of time, respondent had terminated the contract on 23.09.2022, relating to operation and maintenance part and although later on, same has been restored under the terms & conditions of the supplementary agreement dated 02.12.2022, entered into between parties, however, in the interregnum period, entire Jaipur City, more particularly the areas having close proximity with Dravyavati River, started to stink badly, just for want of cleanliness and maintenance as also due to non-operation of Sewage Treatment Plants (STPs) etc. It was even difficult for the people to take a fresh breath in that area.

40. It has been informed that the contract of operation and maintenance of the project, has been entered into between the petitioner- JDA and respondent, for a period of 10 years against Rs.206,08,32,280/- (i.e. more than 206.08 Crores) (Annual cost of Rs.20,60,83,228/- x 10 years).

41. It is the fundamental right of every citizen to live in a hygienic and unpolluted environment and the Government is under obligation and constitutional duty to maintain and provide unpolluted environment to the citizens. If the operation and maintenance part of the project does not function properly and is not properly supervised, certainly the result would be prejudicial

to the interest of public and would amount to violation of their fundamental rights at large.

42. Thus, in order to check & ensure that operation and maintenance work of Dravyavati River Project, should be done continuously, effectively and properly, so also the object of project, sought to be achieved by the Government, may be fulfilled to its completion in true spirit, this Court takes cognizance on this issue in the larger public interest.

43. Petitioner- JDA & respondent- Company are directed and expected to submit yearly maintenance reports in respect of operation and maintenance work of Dravyavati River Rejuvenation Project, on the record of this Court, by way of possible means i.e. either in hard copy or in digitized form.

44. Registry is directed to register a separate petition in the form of Public Interest Litigation (PIL) titled *Suo Moto Vs. Jaipur Development Authority & Anr., In Re: Rejuvenation of Dravyavati River*. Petitioner- JDA and respondent- Company would be impleaded as party respondents in the PIL.

45. Let the PIL be placed before the Division Bench to proceed further in the matter.

(SUDESH BANSAL),J

Sachin Sharma