

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11<sup>TH</sup> DAY OF SEPTEMBER 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NO.56088 OF 2016

C/W

WRIT PETITION NO.1982 OF 2018 (GM-RES)

**BETWEEN:**

M/S SIDDHARTH INFOTECH PVT LTD  
NO.8/31, 2ND FLOOR, SRI. DURGA ENCLAVE,  
J BLOCK, PIPELINE, 1ST MAIN ROAD,  
SHESHADRIPURAM, BANGALORE-560020  
REPRESENTED BY ITS MANAGING DIRECTOR,  
B.G.KUMARASWAMY

... PETITIONER

(By MR. CHINTAN CHINNAPPA, ADV.)

**AND:**

1. GOVERNMENT OF INDIA  
MINISTRY OF HUMAN  
RESOURCES DEVELOPMENT,  
DEPARTMENT OF SCHOOL EDUCATION  
AND LITERACY NEW DELHI  
REPRESENTED BY ITS SECRETARY
2. THE STATE OF KARNATAKA  
REPRESENTED BY ITS  
CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BANGALORE-560 001
3. THE ADDITIONAL CHIEF SECRETARY AND  
DEVELOPMENT COMMISSIONER,  
GOVERNMENT OF KARNATAKA,  
VIDHANA SOUDHA,  
BANGALORE-560 001

4. THE PRINCIPAL SECRETARY  
DEPARTMENT OF PRIMARY AND  
SECONDARY EDUCATION  
MULTISTORIED BUILDING  
BANGALORE-560 001
5. THE COMMISSIONER OF  
PUBLIC INSTRUCTION  
K.R.CIRCLE  
BANGALORE-560 001
6. DEPARTMENT OF STATE EDUCATIONAL  
RESEARCH AND TRAINING (DSERT)  
NO.4, 100 FEET ROAD,  
BANASHANKARI 3RD STAGE,  
BANGALORE-560085  
REPRESENTED BY ITS DIRECTOR
7. THE MANAGING DIRECTOR  
KEONICS, 2ND FLOOR,  
TTMC A BLOCK, BMTC,  
SHANTINAGAR, K.H.ROAD,  
BANGALORE-560027
8. EVERONN EDUCATION LTD  
NO.82, 4TH AVENUE,  
ASHOKNAGAR,  
CHENNAI 600083  
REPRESENTED BY ITS  
GENERAL MANAGER

... RESPONDENTS

(By SRI.S R DODAWAD, CGC FOR R1,  
SRI.M VINOD KUMAR, AGA FOR R2-6,  
SRI.NISHANTH A V, FOR R7,  
SRI.K S MAHADEVAN, ADV. FOR R8,  
SRI.A S PONNANNA, SR. COUNSEL FOR  
SMT.LEELA P DEVADIGA, ADV. FOR R6)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
IMPUGNED GOVERNMENT ORDER DTD.5.7.2016 VIDE ANNEX-P  
ISSUED BY THE R-2 AND ETC.

**WRIT PETITION NO.1982 OF 2018****BETWEEN:**

EVERONN EDUCATION LTD  
(IN LIQUIDATION)  
REPRESENTED BY ITS OFFICIAL  
LIQUIDATOR HIGH COURT OF MADRAS  
CORPORATE BHAVAN 2ND FLOOR,  
NO.29, RAJAJI SALAI NORTH BEACH ROAD,  
CHENNAI-600 001

... PETITIONER

(By MR. K S MAHADEVAN, ADV.)

**AND:**

1. GOVERNMENT OF INDIA  
MINISTRY OF HUMAN  
RESOURCES DEVELOPMENT,  
DEPARTMENT OF SCHOOL EDUCATION  
AND LITERACY, NEW DELHI-110001.
2. THE STATE OF KARNATAKA  
REPRESENTED BY ITS  
CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BANGALORE-560 001
3. THE ADDITIONAL CHIEF SECRETARY AND  
DEVELOPMENT COMMISSIONER,  
GOVERNMENT OF KARNATAKA,  
VIDHANA SOUDHA,  
BANGALORE-560 001
4. THE PRINCIPAL SECRETARY  
DEPARTMENT OF PRIMARY AND  
SECONDARY EDUCATION  
MULTISTORIED BUILDING  
BANGALORE-560 001
5. THE COMMISSIONER OF  
PUBLIC INSTRUCTION  
K.R.CIRCLE  
BANGALORE-560 001

6. DEPARTMENT OF STATE EDUCATIONAL RESEARCH AND TRAINING (DSERT)  
NO.4, 100 FEET ROAD,  
BANASHANKARI 3RD STAGE,  
BANGALORE-560085  
REPRESENTED BY ITS DIRECTOR
7. THE MANAGING DIRECTOR  
KEONICS, 2ND FLOOR,  
TTMC A BLOCK, BMTc,  
SHANTINAGAR, K.H.ROAD,  
BANGALORE-560027
8. M/S SIDDHARTH INFOTECH PVT LTD  
NO.40/1, GF 3<sup>RD</sup> CROSS 4<sup>TH</sup> BLOCK  
KUMARAPARK WEST EXTN  
BANGALORE - 560 020  
(PRIVATE LIMITED COMPANY)  
REPRESENTED BY  
ITS MANAGING DIRECTOR

... RESPONDENTS

(By SRI. S R DODAWAD, CGC FOR R1  
SRI. M VINOD KUMAR, AGA FOR R2-6  
SRI. NISHANTH A V, FOR R7  
SRI. CHINTAN CHINNAPPA, ADV. FOR R8)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER OF THE CANCELLATION OF THE CONTRACT-ICT PHASE III, BY THE RESPONDENTS 2-6 VIDE G.O.ED 64 MAHITI 2016 DATED 05.07.2016 (ANNEXURE-AT) AND IN TERMS OF THE SAID G.O. THE LETTER NC.3/14/2015-16 ISSUED BY RESPONDENT 5 DATED 11.8.2016 TO RESPONDENT 7 (ANNEXURE-AV) AND CONSEQUENT CANCELLATION OF THE CONTRACT BY RESPONDENT NO.7 (IN TERMS OF THE CANCELLATION ORDER VIDE SAID G.O.ED 64 MAHITI 2016 AND THE SAID LETTER FORM THE RESPONDENT 5 VIDE LETTER DATED 16.8.2016 TO THE PETITIONER COMPANY (ANNEXURE-AX) IN CONNECTION WITH THE PROJECT ICT PHASE III, WHICH HAS BEEN RENAMED UNDER THE CURRENT CONCEPT CALLED "TECHNOLOGY ASSISTED LEARNING PROGRAM" & ETC.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

Mr.Chintan Chinnappa, learned counsel for the petitioner.

Mr.S.R.Dodawad, learned Central Government Counsel for the respondent No.1.

Mr.M.Vinod Kumar, learned Additional Government Advocate for the respondent Nos.2 and 6.

Mr.Nishanth A.V., learned counsel for the respondent No.7.

Mr.K.S.Mahadevan, learned counsel for the respondent No.8.

Mr.A.S.Ponnanna, learned Senior counsel for Smt.Leela P. Devadiga, learned counsel for the respondent No.6.

2. Since common questions of law and fact arise for consideration in these writ petitions, therefore, they were heard analogously and are being decided by this common order.

3. The petitioner in W.P.No.56088/2016 namely M/s. Siddharth Infotech Private Limited seeks a writ of certiorari for quashment of order of cancellation of contract dated 05.07.2016. The aforesaid petitioner also seeks a writ of certiorari for quashment of direction dated 30.07.2016 issued by the Principal Secretary to the Commissioner, Public Instructions by which he has been directed not to return the bank guarantees and to terminate the contract with immediate effect. The petitioner in W.P.No.1982/2018 seeks a writ of certiorari for quashment of order dated 05.07.2016 as well as the communication issued by respondent No.5 to respondent No.7 dated 11.08.2016 and consequent cancellation of contract by respondent No.7 vide letter dated 16.08.2016 in favour of the petitioner – Company in relation to the project namely ICT Phase-III. The petitioners also seek a writ of certiorari for quashment of notice dated 12.12.2016 as well as writ of mandamus to respondent Nos.2 to 7 to refund / release the bank guarantees to the tune of ₹22,43,15,270/- to the

petitioners and its consortium partners along with interest.

4. Facts giving rise to the filing of the petitions briefly stated are that in 2004 respondent No.1 namely Government of India introduced the scheme known as Information and Communication Technologies at Schools (hereinafter referred to as 'the ICT' for short) with primary object of spreading computer literacy program amongst the students and modernizing and upgrading computer hardware and infrastructure in schools. The scheme was approved by the Government of Karnataka and it decided to implement ICT Phase-III project in 1763 Government high schools and 2633 in Government aided schools in the State of Karnataka. It was agreed that the Central Government would provide a sum of ₹5,00,000/- to each school whereas the State Government shall contribute a sum of ₹1,70,000/- to each school. The total value of the project was approximately ₹426 crores. In 2009-10, it was decided

to get the project executed to M/s. Karnataka State Electronics Development Corporation (hereinafter referred to as 'the KEONICS' for short). The KEONICS was required to float a tender to implement the project. The KEONICS called for a national competitive bidding on 30.08.2010 by way of a request for proposal and the successful bidder were required to provide site preparation, supply of computer hardware, software and accessories and computer educational services. The request for proposal floated by KEONICS permitted a consortium to submit its bid for the project.

5. The petitioner in W.P.No.1982/2018 submitted the bid as primary tender along with the then consortium partners. The Tender Scrutiny Committee approved the tender of the petitioner in W.P.No.1982/2018 on 18.03.2011. A decision was taken by the Chief Minister on 26.05.2011 by which decision of the Cabinet to proceed with the tender process initiated by the KEONICS was approved.



Thereafter, on 22.07.2011, KEONICS and Commissioner for Public Instructions entered into an agreement for supply, installation and annual maintenance of the project. Clause 1 of the aforesaid agreement dealt with subcontracts and KEONICS was required to notify in writing all subcontracts awarded under the contract. A back to back agreement was signed between KEONICS and the petitioner in W.P.No.1982/2018 which had clauses pertaining to subcontracts.

6. The work orders were issued on 01.08.2011 to KEONICS and consequently the petitioner in W.P.No.1982/2018 submitted bank guarantees worth ₹19.17 crores to secure advance payment for site preparation and bank guarantee worth ₹84.27 crores to secure advance payment for hardware delivery. It is the case of the petitioners that despite submission of performance bank guarantees for hardware delivery, the respondents failed to release the advance amount for hardware procurement and delivery. Thereafter, a

supplemental agreement dated 18.08.2012 was also executed between Government of Karnataka and KEONICS wherein KEONICS had to submit all back to back agreements with the successful bidder to the Government of Karnataka under Clause 4.6 and 4.7 of the supplemental agreement. It is the case of the petitioners that contrary to the terms of the agreement, for a period of 2 years i.e. between 2012 to 2014, the payments towards the components falling under the 'hardware delivery' were not paid to the petitioners. The State Government in its budget, raised the sales tax from 4% to 5.5% and service tax from 12.5% to 14.5%. Therefore, the file was required to be sent to the Cabinet again for approval, which resulted in delay of the project. The previous consortium partners left the project and one Ricoh Limited and Siddharth Infotech Ltd. were included as consortium partners by the petitioner in W.P.No.1982/2018 which was notified to KEONICS vide communication dated 25.06.2015 in

terms of the agreement which was duly acknowledged by the KEONICS vide reply sent on 26.06.2015.

7. It is the case of the petitioners that they had successfully completed the entire site preparation and the networking and cabling part of the project and supplied Microsoft server, TAL and CAL license as required under the hardware delivery at the cost of ₹10.47 crores. The KEONICS confirmed the work performed by the consortium in its progress report dated 13.10.2011 and mentioned some reasons for delay in implementation of the project in some of the schools, on account of lack of infrastructure. The State Government directed the petitioners to furnish the fresh bank guarantees as new consortium had come into existence. Accordingly, Ricoh India Limited furnished a bank guarantee to the tune of ₹18.8 crores in favour of Government of Karnataka. In the aforesaid bank guarantee which was duly accepted by the State Government, there was a clear mention about the

consortium and its partners. However, it is averred that despite accepting the fresh bank guarantee, the Government did not execute second supplementary agreement. It is also pleaded in the writ petition that a sum of ₹146.06 crores was spent on the project and ₹34.80 crores was received from the Central Government. It is averred that petitioners had completed site preparation, network cabling and bought software licences at the cost of ₹10.47 crores and supplied the same in 2012.

8. The Principal Secretary to the Government of Karnataka prepared a detailed note dated 16.11.2015 wherein it was stated that there was delay in execution of the project and the factum of actual work done by the petitioners were also acknowledged. Thereafter, a meeting was held with various departments of the Government of Karnataka on 07.12.2015 in order to discuss the project. In the aforesaid meeting, the departments of the State Government sought the views

of KEONICS on technical and financial competence of primary bidder and consortium partners. An opinion with regard to adequacy of performance security was also sought. Thereupon, a detailed report was prepared by the Centre for e-governance on 20.01.2016 in which, specifications with regard to computer hardware were approved and it was stated that pricing and cost of the hardware were competitive in accordance with market standards. In addition, it was also suggested that no major changes were recommended for specifications.

9. Despite the aforesaid report submitted by the Centre of e-governance, the departments of State Government in its meeting held on 16.03.2016 came to the conclusion that hardware had reached its 'end of life stage' and proposed to terminate the contract. The departments of the Government suggested for termination of the project either on the ground of default by the suppliers or for remodeling of the project. Further, in the same meeting a conclusion was recorded

that the hardware has reached its end of life and implementation of project by a consortium was questioned. On the aforesaid grounds, it was recommended that the project be terminated. It was also proposed to return the bank guarantees to the petitioners only if suppliers agree not to resort to contract termination related litigation. The Cabinet considered the recommendations and thereafter, the State Government passed an order dated 5.7.2016 terminating the project on the ground that the same has to be remodeled and directed that the bank guarantees furnished by the petitioners be returned. On account of the condition imposed by the State Government that the petitioners shall be entitled to return of bank guarantees only if it does not file any contract related litigations, the petitioner in W.P.No.1982/2018 requested vide letter dated 1.7.2016 for return of bank guarantee. However, the Principal Secretary to the Government of Karnataka by a communication dated 30.7.2016 sent to the Commissioner of Public Instructions changed its

stand and intimated him to withhold the bank guarantees provided by the petitioners. Thereafter, another meeting of the Departments of the State Government was held on 18.07.2016 to determine various violations of contract and also return of software already supplied. It is the case of the petitioners that another meeting was held on 23.07.2016 where decisions were taken in utter disregard to various provisions of the contract. Thereafter, only a sum of ₹19.17 crores out of ₹84.08 crores, which was received by the State Government towards bank guarantee was released as advance towards site preparation. The petitioner in W.P.No.1982/2018 was facing winding up proceeding before High Court of Madras and an official liquidator was appointed. An application was filed by the Board of Directors of the petitioner seeking a direction to the official liquidator to prosecute W.P.No.56088/2016. Thereupon, by an order dated 18.08.2017 the official liquidator was directed to take steps to protect the interest of the petitioner in

W.P.No.1982/2018. In the aforesaid background, the petitioners have approached this Court as stated supra.

10. Learned counsel for the petitioner in W.P.No.56088/2016 submitted that before termination of the contract, the Government was not sure as to what reasons have to be assigned for termination of the contract. It is further submitted that the Government was looking out for reasons for termination of the contract and the Government cannot be allowed to approbate or reprobate. It is further submitted that the action of the respondents in unilaterally rescinding the contract of the petitioner is *per se* arbitrary and the petitioners are ready and willing to perform the contract. It is also submitted that the powers of judicial review can be exercised even in contractual matters if the impugned action is *per se* arbitrary and is violative of the constitutional mandate contained in Article 14 of the Constitution of India. It is submitted that the impugned action is arbitrary and suffers from the vice of



non-application of mind. It is also urged that the petitioner has locus to maintain the petition as the petitioner has become a member of consortium and after furnishing the bank guarantee and an intimation in this regard being furnished to the State Government, therefore, at this point of time, it is not open for the State Government to contend that the petitioner in W.P.No.1982/2018 has no locus to maintain the petition. It is further submitted that notwithstanding availability of an alternative remedy in the form of an arbitration clause, the writ petition can be entertained. Learned counsel for the petitioner in W.P.No.1982/2018, while adopting the submissions made by the learned counsel for the petitioner in W.P.No.56088/2016, has submitted that the petitioner has locus to maintain the petition and this Court, in exercise of powers of judicial review, can interfere even in contractual matters where the State Government is arbitrary and irrational. It is further submitted that the petitioner could not be relegated to the alternative remedy of arbitration as the

instant case is a case of flagrant violation of fundamental rights provided under Article 14 of the Constitution of India.

11. In support of his submissions, learned counsel for the petitioner in W.P.No.1982/2018 has placed reliance on the decisions in the cases of **'KUMARI SHRILEKHA VIDYARTHY AND OTHERS Vs. STATE OF U.P. AND OTHERS'** (1991) 1 SCC 212, **'HARBANSLAL SAHNIA AND ANOTHER Vs. INDIAN OIL CORPN. LTD. AND OTHERS'** (2003) 2 SCC 107, **'KARNATAKA STATE FOREST INDUSTRIES CORPORATION Vs. INDIAN ROCKS'** (2009) 1 SCC 150, **'SUSHILA CHEMICALS PRIVATE LIMITED AND ANOTHER Vs. BHARAT COKING COAL LIMITED AND OTHERS'** (2010) 10 SCC 388.

12. On the other hand, learned Senior counsel for the respondent Nos.2 to 6 has submitted that the petitioner in W.P.No.56088/2016 has no locus to

entertain the writ petition. It is pointed out that an agreement was executed between the Government of Karnataka and KEONICS on 22.07.2011. Thereafter, the petitioner in W.P.No.56088/2016 has entered into a consortium on 07.03.2014. It is also urged that neither the petitioner in W.P.No.1982/2018 nor the petitioner in W.P.No.56088/2016 are parties to the agreement with the State Government and KEONICS. It is also pointed out that the consortium is also not a party to the contract which was executed on 22.07.2011 between the State Government and KEONICS. Therefore, both the petitioners do not have any locus to maintain the petitions as they have no privity of contract with the State Government. It is also submitted that the petitioner in W.P.No.56088/2016 cannot assail the agreement dated 05.07.2016 by which the agreement executed by the State Government and KEONICS was terminated as the aforesaid petitioner is not a party to the aforesaid agreement. It is also submitted that for the same reason, the communication dated 30.07.2016

which was sent by the Principal Secretary, Government of Karnataka to the Commissioner of Public Instructions cannot be assailed by the petitioner as there is no privity of contract between the petitioner and the State Government. It is also urged that in W.P.No.56088/2016, the order dated 16.08.2016 by which the contract between State Government and KEONICS has been terminated, has not being challenged. It is also submitted that disputed questions of fact arise for consideration in these writ petitions and the State Government infact had entrusted the work of execution of project in question in favour of KEONICS and had paid a sum of ₹39 crores and KEONICS was under an obligation to execute the project. Since the KEONICS failed to execute the project, therefore, the State Government has cancelled the contract awarded in favour of KEONICS and the petitioners who are the subcontractors, have no locus to challenge the aforesaid orders. It is also urged that the period of contract which was for 5 years, had already expired and

thereafter, the decision was taken to rescind the contract with which no fault can be found. It is also argued that the writ petition involves disputed questions of fact which cannot be adjudicated by this Court in exercise of powers under Article 226 of the Constitution of India and in the face of alternative remedy of arbitration provided to the parties under the agreement. The petitioners, if so aggrieved, are ready to take recourse to the remedy of arbitration against KEONICS. It is also submitted that cancellation of contract was done after issue of notice to KEONICS as they have failed to perform the contract. In support of his submissions, learned Senior counsel for the respondent Nos. 2 to 6 has placed reliance on the decisions of the Supreme Court in the cases of '**BISRA STONE LIME COMPANY LTD. AND ANOTHER Vs. ORISSA STATE ELECTRICITY BOARD AND ANOTHER**' AIR 1976 SC 127, '**EMPIRE JUTE COMPANY LIMITED AND OTHERS Vs. JUTE CORPORATION OF INDIA LIMITED AND ANOTHER**' (2007) 14 SCC 680 and

the decisions of this Court in ***W.P.No.14134/2015 decided on 11.09.2015 and W.P.No.38613/2018 decided on 25.02.2019.***

13. By way of rejoinder, learned counsel for the petitioners submitted that the contract which was executed between the State Government and the KEONICS itself provides that KEONICS can appoint subcontractors and the aforesaid fact has to be notified to the State Government. Similar clause is contained in the contract which was executed by Everonn and KEONICS. It is further submitted that in the supplemental agreement in clause 1(2) of Schedule 1, it is provided that the clauses in agreement of Everonn and KEONICS shall be read as part and parcel with the agreement of State Government and KEONICS and clauses 4.6 and 4.7 of the supplemental agreement recognizes the consortium. It is further submitted that new members of consortium namely the petitioners had furnished the bank guarantee which was accepted by

the State Government and the State Government had invoked the bank guarantee. It is further pointed out that in the order passed by the State Government, it is provided that any breach by any member of consortium shall be considered breach by the principal contractor and thereupon the bank guarantee can be encashed. Lastly, it is pointed out that since there is no agreement between the petitioner in W.P.No.56088/2016 and either the State Government or KEONICS, therefore, this petitioner cannot invoke the arbitration clause and the petitioner has no other remedy but to approach this Court and the petitioner cannot be rendered remedyless. Learned Senior counsel for the petitioner also submitted that since W.P.No.56088/2016 is under liquidation, therefore, the petitioner is not in a position to complete the contract which was awarded to it.

14. I have considered the rival submissions and have perused the record. Before proceeding further, I deem it appropriate to advert to certain well settled

legal propositions. In '**LIFE INSURANCE CORPN. OF INDIA AND OTHERS Vs. ASHA GOEL (SMT) AND ANOTHER**' (2001) 2 SCC 160, it has been held that ordinarily the High Court should not entertain the writ petition filed under Article 226 of the Constitution of India for mere enforcement of a claim under a contract. In '**ORISSA AGRO INDUSTRIES CORPN. LTD. AND OTHERS Vs. BHARATI INDUSTRIES AND OTHERS**' (2005) 12 SCC 725, it has been held that where complicated questions of fact are involved and the matters require factual adjudication, the High Court should not entertain the writ petition. The question whether or not the High Court should entertain the writ petition would largely depend on the nature of dispute and if the dispute cannot be resolved without adjudicating the factual controversy, the High Court should not entertain the writ petition. It is well settled proposition that the powers under Article 226 of the Constitution of India will not ordinarily be invoked if the arbitration clause exists and if the disputed questions of



fact and law arise for consideration, the parties should be relegated to the remedy of arbitration agreement. (See: **EMPIRE JUTE COMPANY LIMITED AND OTHERS, supra**). It is also equally well settled legal proposition that jurisdiction of the writ court exercising the power of judicial review is limited. Where the action of the State is found to be unfair, unreasonable or arbitrary, the High Court can exercise its jurisdiction. However, in the matter of enforcement of terms of contract, the parties are usually governed by terms of contract and the powers of judicial review shall not be exercised unless the action is wholly arbitrary and unreasonable. (See: '**INDIAN BANK Vs. GODHARA NAGRIK COOPERATIVE CREDIT SOCIETY LIMITED AND ANOTHER**' (2008) 12 SCC 541). In '**SRI RAM BUILDERS Vs. STATE OF MADHYA PRADESH AND OTHERS**' (2014) 14 SCC 102, it has been held that the scope of judicial review is very limited in contractual matters even where one of the contracting parties is State or instrumentality of State and powers of judicial

review should not be exercised in a matter pertaining to breach of contract especially when the same involves adjudication of questions of fact. Similar view has been taken in '**JOSHI TECHNOLOGIES INTERNATIONAL INC. Vs. UNION OF INDIA AND OTHERS**' (2015) 7 **SCC 728**, wherein it has been held that invocation of writ jurisdiction under Article 226 of the Constitution of India is not permissible in respect of a contract pertaining to private law rights. It has further been held that doctrine of legitimate expectation, reasonableness and fairness cannot be invoked when no public law element is involved.

15. In '**CHLORO CONTROLS INDIA PRIVATE LIMITED Vs. SEVERN TRENT WATER PURIFICATION INC. AND OTHERS**' (2013) 1 **SCC 641**, in paragraph 70, the Supreme Court has held as follows which is reproduced for the facility of reference:

*"70. Normally, arbitration takes place between the persons who have, from the*

*outset, been parties to both the arbitration agreement as well as the substantive contract underlining (sic underlying) that agreement. But, it does occasionally happen that the claim is made against or by someone who is not originally named as a party. These may create some difficult situations, but certainly, they are not absolute obstructions to law/the arbitration agreement. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Of course, heavy onus lies on that party to show that, in fact and in law, it is claiming "through" or "under" the signatory party as contemplated under Section 45 of the 1996 Act. Just to deal with such situations illustratively, reference can be made to the following examples in Law and Practice of Commercial Arbitration in England (2<sup>nd</sup> Edn.) by Sir Michael J. Mustill:*

- 1. The claimant was in reality always a party to the contract, although not named in it.*
- 2. The claimant has succeeded by operation of law to the rights of the named party.*

3. *The claimant has become a party to the contract in substitution for the named party by virtue of a statutory or consensual novation.*

4. *The original party has assigned to the claimant either the underlying contract, together with the agreement to arbitrate which it incorporates, or the benefit of a claim which has already come into existence."*

16. Similar view has been taken by the Supreme Court in '**CHERAN PROPERTIES LIMITED Vs. KASTURI AND SONS LIMITED AND OTHERS'** (2018) 16 SCC 413 and it has been held that 'Group of companies doctrine' applies to cases where transactions are with a group of companies. The relationship of non-signatory to the party which is a signatory, the commonality of subject matter and composite nature of transaction are relevant considerations to adjudicate on bindingness of the agreement on a non-signatory.

17. In the backdrop of aforesaid well settled legal principles, the facts of the case on hand may be

examined. The petitioners have taken a stand in the writ petitions that the petitioners have completed the agreement. However, from perusal of the decision taken in the meeting of the cabinet on 04.05.2016, it is evident that in the aforesaid meeting it is noted that project has largely remained unimplemented for various reasons including lack of implementation, planning, procurement dispute cases in the High Court, delays in finalising the scope of supplies and services entrusted to KEONICS and the terms of payment by the Government and the performance guarantee to be provided by the KEONICS. It has also been noted that Government of India has only released ₹34.80 crores in installments during the year 2008-09 and during 2012-13, thereafter no further funding has been received from the Government of India for want of timely implementation. It has further been held that Department purchased UPS with batteries, filters and protectors from various suppliers at DGS and D rate during the year 2010-11 at the total cost of ₹92.82 crores before obtaining approval

of the cabinet for implementation of the project. It has also been observed in the minutes of meeting that the aforesaid equipments have not been put to use in the project as the servers and computers are yet to be supplied and computer education is yet to commence. It has further been held that due to inordinate delay on account of litigation and differences over the conditions of the contract with KEONICS for supply of hardware and educational services, the project has become untenable due to following reasons:

- i. Hardware approved by TAP in 2009 and revalidated in 2014, and envisaged the contract has reached its end-of-life stage.*
- ii. System software licenses provided by KEONICS, though yet to be put to use, has also reached end-of-free update and life cycle support period. Further updates may be available for few years on payment basis only but not for the entire project period of 5 years.*
- iii. Evaluation done by NCERT regarding ICT projects in Karnataka was very clearly brought out that external supply of*

*educational services in earlier projects has not been effective and sustainable.*

*iv. In absence of provision for e-content for IT enables subject learning, the project is likely to result in poor outcomes.*

*v. It is not possible to obtain services of qualified instructors and adequate connectivity at the rates envisaged in the contract.*

*vi. The supplier selected by KEONICS through a tender process has now sought to implement it through a consortium. There was no provision in the RFP for formation of such consortium on post-contract basis.*

*vii. KEONICS successively has sought more favorable payment terms and lower performance guarantees than envisaged in its RFP.*

*viii. There have been inordinate delays in supplying the hardware, providing connectivity and educational services leading to huge loss of learning opportunities for students.”*

Accordingly, a decision was taken to terminate the contract and the project was directed to be restructured by incorporating good practices and features from the Kerala project and recommendations contained in NCERT evaluation. Thus, the decision to rescind the contract has been taken on the grounds stated supra.

18. Thus, from above narration of facts, it is evident that this Court is required to record a finding as to which party is responsible for rescission of the contract as well as the fact whether or not the reasons assigned by the State Government for cancellation of the contract are justified. This Court is also required to deal with rival claims of the parties. The aforesaid questions fall in the realm of disputed questions of fact which cannot be adjudicated in exercise of powers of judicial review under Article 226 of the Constitution of India.



19. So far as the submission made on behalf of learned Senior counsel for respondent Nos.2 to 6 with regard to the locus of the petitioners is concerned, the same is required to be stated to be rejected, as even though the petitioners may not be parties to the contract between the State Government and KEONICS, the fact remains that KEONICS under the agreement had the authority to appoint subcontractors. It is also pertinent to mention here that bank guarantees furnished by the petitioners were accepted by the State Government. On account of rescission of contract, the petitioners' rights have been affected. Therefore, they are the aggrieved persons and have locus to maintain the petitions.

20. At this stage, it is apposite to deal with the submission made by the learned counsel for the petitioners that since they are not parties to the contract, therefore, they cannot avail of the remedy of arbitration. The Supreme Court in the case of **CHLORO**

**CONTROLS INDIA PVT. LTD.**, supra, has held that arbitration could be possible between a signatory to an arbitration agreement and a third party, specially when the claimant has succeeded by operation of law to the rights of the named party in the contract. In the instant case, admittedly the agreement was executed between the State Government and KEONICS. Under the terms and conditions of the agreement, the KEONICS had the authority to nominate subcontractors to execute the project as well as to permit a consortium to participate in the process of tender. Admittedly, the previous consortium partners left the project and Siddharth Infotech Limited was inducted as consortium partner which was notified to the KEONICS vide communication dated 25.06.2015. Admittedly, EVERONN Education Limited was a subcontractor of KEONICS. Thus, the petitioners, in other words, have stepped into the shoes of the subcontractors and in reality, are a party to the contract although not named in it. The rights of the named party have devolved on the petitioners by

operation of law and therefore, the petitioners have the authority to invoke the arbitration clause. In the fact situation of the case, since the matter requires adjudication of questions of fact and in the absence of any element of public law, the doctrine of legitimate expectation, reasonableness and fairness do not apply to the fact situation of the case. The matter requires adjudication of factual dispute which cannot be gone into in the writ petitions. However, liberty is granted to the petitioners to take recourse to the remedy of arbitration or such other remedy as may be available to them in law.

With the aforesaid liberty, the petitions are disposed of.

**Sd/-  
JUDGE**

RV