

IN THE HIGH COURT OF TELANGANA AT DERABAD**W.P. No. 13266 of 2023****Between:**

M/s Sanyu Infra Projects Pvt.Ltd.
Rep. by its Managing Director

... Petitioner

And

Union of India and others

... Respondent

JUDGMENT PRONOUNCED ON: 21.12.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 13266 of 2023

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Between:

M/s Sanyu Infra Projects Pvt.Ltd.
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> Head Note:

!Counsel for the Petitioners: Mr. L. Ravi Chander,
Sr.Designated Counsel
representing
Mrs Srutha Keerthi Mandhata
^ counsel for Respondentd: Mr K.Arvind Kumar

? Cases Referred:

1. (2021) 6 SCC 771
2. 1998(8) SCC 1
3. 1989 AIR 1607
4. (2023) 2 SCC 703
5. 2017 SCC online Hyd.426
6. 2021 SCC online SC 801

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 13266 of 2023****ORDER:**

Heard the learned Senior Counsel Mr. L. Ravi Chander representing the counsel on record Mrs Srutha Keerthi Mandhata appearing on behalf of the Petitioner and Mr K.Arvind Kumar, the learned standing counsel appearing on behalf of respondents 1 to 4.

2. Petitioner approached the Court seeking prayer as under :

"to issue a writ, order or direction more particularly one in the nature of Mandamus, declaring the action of the respondent in Reply No.G/W.148/South/W.A – III, dated 24.04.2023, as contrary to the directions in the judgment of the Division Bench in W.A.No.301 of 2023, dated 10.03.2023 and therefore, set aside the same and consequently, set aside the tender notice Nos.Engg-GTL-South-1379, Engg-GTL-South 1384, Engg-GTL-South-1382, Engg-GTL-South-1375, Engg-GTL-South-1378, Engg-GTL-South-1381, Engg-GTL-South-1383, Engg-GTL-South-1380, Engg-GTL-South-1376, Engg-GTL-South-1377 – dated 28.04.2023, vide – Guntakal Division :: RU GY Section: for proposed construction of Road Under Bridge (Subway) being illegal, arbitrary,

violative and contrary to settled direction in W.A.No.301 of 2023, dated 10.03.2023.

PERUSED THE RECORD :

3. The relevant portion of the order dated 18.01.2023 passed in W.P.No.23748, 23749, 23750, 23751, 23752, 23753, 23754, 23755, 23756, 23757 and 27582 of 2022, in particular, paras 44 and 45, reads as under:

44. In view of the law laid down by the Apex Court as stated supra, the petitioners in all the aforesaid writ petitions failed to explain irregularity committed by respondents in terminating the contracts. On the other hand, respondent railways established that there was delay on the part of the petitioners in all the aforesaid writ petitions in commencing and completing the work. In W.P.No.27582 of 2022 despite granting six extensions, the petitioner therein failed to complete the work and even he did not complete the work within four years from the date of LOAs. He has completed only 49% of work. In other writ petitions, the petitioner failed to commence work even after 7 months period from the date of LOA.

45. In all the aforesaid contracts, there was delay on the part of the petitioner in furnishing performance bank guarantee. The petitioners in all the aforesaid writ petitions failed to establish any irregularity either procedural or legal including violation of the procedure

laid down under LOA/Contract Agreement and GCC and therefore, the petitioners are not entitled for any relief much less relief sought in these writ petitions. Therefore, these writ petitions are liable to be dismissed.

4. The judgment dated 10.03.2023 of the Division Bench of this Court in W.A.No.301 of 2023 and in particular, paras 14 to 17, reads as under:

"14. From the above, it is seen that stand taken by the respondents was that all notices were uploaded on IRWCMS i.e., the online platform. Appellant having participated in the tender and after obtaining Letter of Acceptance was supposed to get all agreements, bills, extensions etc., through the aforesaid online portal; it is the responsibility of the appellant to obtain such information.

15. Learned Single Judge observed that the termination notice was placed in the IRWCMS site. Appellant had filed copies of seven (7) days and forty-eight (48) hours notice which were issued prior thereto and therefore, appellant cannot contend that the said notices were not served upon the appellant. Learned Single Judge held that there was no irregularity in terminating the aforesaid contract by the respondents.

16. Before we proceed to deal with the above conclusion of the learned Single Judge, our attention has also been drawn to clause 64 of the Standard General Conditions of Contract which provides for arbitration. It

is another matter that learned Single Judge has held the writ petition to be maintainable notwithstanding availability of the remedy of arbitration. Having entertained the writ petition, we are of the view that learned Single Judge instead of entering into the merit as to the justification for cancellation of contract, ought to have confined the deliberation to the decision making process. After all, judicial review is primarily concerned with the decision making process and not with the decision per se. If the writ court feels that the decision making process is vitiated by non-compliance to the procedural requirements and violation of the principles of natural justice etc., certainly a writ court would be entitled to entertain a writ petition in exercise of its power of judicial review notwithstanding availability of alternative remedy. When clause 4 of the Standard General Conditions of Contract clearly provides that all notices, communications etc., should be in writing or on registered e-mail IDs, it means that the notices would have to be sent to the affected party in writing or to the registered e-mail ID of the affected party. Otherwise, clause 4 would have mentioned that such a notice would be uploaded or posted in IRWCMS portal. That having not been done, we are of the view that there is violation of the principles of natural justice inasmuch as due notice and adequate opportunity of hearing was not granted to the appellant before cancellation of contract.

17. Having said that we are of the view that appellant should be relegated to the forum of respondent No.4. Now that appellant is aware of the reasons for termination of contract, let the appellant appear before respondent No.4 on 20.03.2023 at 11.00 am whereafter respondent No.4 shall take a fresh decision in accordance with law. All contentions are kept open. Needless to say, if the appellant is aggrieved by any decision that may be taken by respondent No.4, it will be open to the appellant to avail the remedy as provided in clause 64 of the Standard General Conditions of Contract.

5. The letter dated 24.04.2023 of the 4th respondent vide No.G/W.148/South/WA-III addressed to the petitioner, reads as under:

“With reference to your letter cited above, it is to state that your representative Sri P.Sudharshan Reddy had attended this office on 20.03.2023 and a meeting was arranged with him in the chamber of Sr.DEN/Co-ord/GTL and DEN/South/GTL also participated in the meeting as per the instruction of Honorable High Court of Telangana at Hyderabad. Ples of Sri P.Sudharshan Reddy, Managing Director of M/s Sanyu Infra Projects Private Limited plea was widely discussed in the meeting and his main contention was that no notices of this office were received.

In this connection, it is to further state that as per the instructions of Railway Board vide letter NO.2018/CE-L/CT/20 dated 21.04.2020, to implement IT Application works contract Management System (IR-WCMS) and vide point 3 of the letter it was clearly stated that the IT Application covers all the activities associated with contract handling including "Correspondence between Railway with contractor". Point 5 of the same letter mentioned that all new works contracts of Engineering Department awarded after 30.04.2020 should be handled on IR-WCMS. It is pertinent to mention there that all the LOAs for the above contracts were awarded after 30.04.2020 and so were supposed to be dealt through this e-Application only.

While participating in tenders in IREPS web site the tenderers participate through their IREPS ID made by them which is made using their mail ID. After awarding the work, LOA is generated in the name of successful bidder and delivered to the tenderer through IREPS website and to the email id provided by the tenderer.

While IR-WCMS was being implemented, contractors were supposed to make their ids in IR-WCMS corresponding to the login details of their IREPS website. Once the ids were made by the contractor all correspondences were supposed to be done through the IR-WCMS portal. Following the same instructions of

Railway Board, all notices were sent to you in IR-WCMS to your id which was created by you only. All correctness of your id in IR-WCMS and its maintenance is your responsibility for smooth correspondence between you and Railway, Railway has no option to edit any id and all those powers are entrusted to you. Hence, all notices were sent to your id which was made by you.

In addition, the notices were present in your id and were visible when you opened your id when you came to DRM office in May, 2022. Now stating that you did not receive any notice is not correct on your part. Hence, the decision taken by this office stands good.

In as much as, all the 10 Contracts were terminated and communicated to your firm in the IR-WCMS application correctly as clearly explained above. Further action had been Initiated to realize the Performance Guarantee amounts, which were in the form of Bank Guarantees said to have been issued by Bank of Baroda Tilak Nagar Branch, Hyderabad.

It is again iterated in this connection that the decision of this office taken earlier stands good.

6. The respondents filed Counter affidavit and in particular, the relevant portion of Para 3, and paras 5, 6, 7, 8 and 15, read as under:

"3.Though about 07 month period is lapsed, the petitioner company has not commenced the work. As per LOAs issued to the petitioner, the contract agency

should commence the work within 15 days duly mobilizing their resources to respective locations.....

.....Hence, the railways authorities terminated the above contract work entrusted to the petitioner duly following issue of 07-days notice initially, 48 hours' notice, subsequently the contracts were terminated and the performance Guarantee amounts were forfeited as per terms and condition of Tenders and GCC. All the notices have been sent to the petitioner ID in Indian Railway – Work Contract Management System (IR-WCMS) (Online platform for making agreements, recording bills, paying bills, granting extension of currency, issuing notice etc.).

5. I submit in reply to the Para 3 of the writ affidavit it is humbly submitted that, to increase transparency and to avoid fraudulence, Railways have formulated online system of Tender and Contract Management whereby the whole process of tenders, bidding by the vendors, agreements, billing etc. are done in a transparent manner in the online digital portals i.e. Indian Railway E-Procurement System and Indian Railway Works Contract Management System. The Railway Board letter to this effect is enclosed for reference. This system is adopted all over Indian Railways since May-2020 and the digitalization has been tremendously fool proof and fair with no room for fraudulence on either side.

There is no violation of Principles of natural justice as the notices were sent to the registered mail-ID provided by the Respondent in their bids submitted for the tender

floated for these works in Indian Railway E-Procurement System (IREPS). Herein, it is pertinent to mention that the Railways developed two portals i.e. IREPS for e-Tenders and IRWCMS for e-Contracts for effective management and these two portals are integrated and the process of Contract Management is automatically ported from IREPS after conclusion of Tenders to IRWCMS. Hence, the plea of the Respondent that they have not received communication from IREPS does not hold water. It is pertinent to mention here that the mail is sent by Railways through digital platform, be it through any portal as long as the mail is sent to the correct mail-ID, and the Respondent claiming ignorance on this pretext is not correct. The Clause (4) under General Obligations in Part II of Indian Railway General Conditions of Contract-Standard General Conditions of Contract clearly states that:

"All notices, communications, reference and complaints made by the Railway or the Engineer or the Engineer's Representative or the Contractor Inter se concerning the works shall be in writing or e-mail on registered e-mail IDs and no notice, communication, reference or complaint not in writing or through e mail, shall be recognized."

6. As the e-mail ID is registered by the Respondent in the IREPS website, all communications were sent to the e-mail ID registered with IREPS and the plea that the

communication is not received from IRWCMS does not hold water since the platform from where the communication is sent does not matter as long as the communication is sent to the correct e-mail ID. As a matter of fact, IRWCMS is the official website of Railways for dealing with Contract Management and this portal is Integrated with IREPS. The Petitioner has already executed contract works in this Division in such on line system after the implementation of online system over Indian Railways and is well aware of the pros and cons of the online contract system. The letters of award of contract for the other works to the petitioner are enclosed for kind information.

7. It is pertinent to mention here that the petitioner is adhering to the online system of communications in these contracts with the same mail-ID ie sanyu_infra@yahoo.com. The screen shot of the IRWCMS web pages showing the communications made by the petitioner with the same mail-ID is also enclosed for kind Information. For all the 10 contracts in subject, slow progress notices, Seven days notices and 48 hours notices were sent to the mail ID registered by the petitioner in their bid i.e. sanyu_infra@yahoo.com. The Termination Notices were also sent to the same mail ID on 04/05/2022. It can be seen in the web page that the petitioner has sent communications to the Railways in other contract case from the same mail ID in June-2022. The Hon'ble Court's kind attention is drawn to the

fact, as evident from the Screenshot of the Web Pages mentioned above, that the petitioner has changed the mail-ID from the one provided in the contracts in subject i.e. sanyu_infra@yahoo.com to sudarsanvreddyp@yahoo.co.in during the course of dispute attributable to the petitioner's mala-fide intention.

8. As per the High Court of Telangana at Hyderabad orders dated 10.03.2023 in Writ Appeals No.276,288,289,301,302 & 303, dated 13.03.2023 in Writ Appeals No.307, 308 and dated 14.03.2023 in Writ Appeals No.310 and 312 had directed the Petitioners to appear before Respondent No.4 on 20.03.2023 where after Respondent No.4 shall take fresh decision. Accordingly, the Petitioner had attended the office of Respondent No.4 on that date and a meeting was conducted with him in the chamber of Senior Divisional Engineer/Co-ord/Guntakal and Divisional Engineer/South/Guntakal had also participated in the meeting. The matter relating to Termination of contracts and communicated the same to the Petitioner through IR-WCMS official web site to Petitioner i.e. sanyu_infra@yahoo.com and all the Notices communicated to the Petitioner was shown to him in Screenshot. The Petitioner attribution that he had not received any Notice cannot be accepted in the matter. In this particular case, the Petitioner had utterly failed to commence works at Level Crossings locations even after 07 months' period was lapsed as against contract period

of 12 months and there is no hope that the Petitioner can able to execute the works and hence, no fresh decision was taken and advised to the Petitioner vide Letter No.G/W.148/South/WA-III dt:24.04.2023. It is pertinent to mention here that while directing the Petitioner to the forum of Respondent No.4, Hon'ble High Court held that:

"Needless to say, if the appellant is aggrieved by any decision that may be taken by Respondent No.4, it will be open to the appellant to avail the remedy as provided in clause 64 of the Standard General Conditions of Contract."

In the GCC, there exists a "Dispute Resolutions' by way of Clause No.64 to settle the dispute by way of Arbitration, since, the Hon'ble High Court vide Order dt: 10-03-2023 in the W.A.276 filed by the petitioner held that if the appellant is aggrieved by any decision that may be taken by Respondent No.4, it will be open to the appellant to avail the remedy as provided in Clause 64 of the Standard General Conditions of Contract.

As per the Hon'ble Court orders, Meeting was held with the petitioner on 20/03/2023 and fresh decision was taken by Respondent No.4 and communicated to the petitioner.

In pursuance of the Hon'ble Court orders, the petitioner, if aggrieved by the decision shall avail the remedy as provided in clause 64 of Standard General Conditions of Contract. Therefore, the petition is not

maintainable for admission in the light of the facts explained above as the petitioner has been given the opportunity of availing the remedy provided in clause 64 of Standard General Conditions of Contract.

15. I submit in reply to the Para 11 of the writ affidavit it is humbly submitted that, the High Court of Telangana at Hyderabad vide order dt: 10.03.2023 In W.A.No.276 had advised to the Petitioner to attend the office of Respondent No.4 on 20.03.2023 and the Respondent Railways have obeyed the above Court orders and conducted a meeting and the matters of terminating of all the 10 contracts and conveyed the Notices from the Railways web to the Petitioner's mail ID sanyu_infra@yahoo.com had been widely discussed and shown the screenshot to the Petitioner and the receipt of Notices was displayed correctly. The Petitioner has utterly failed to carry out the works awarded to him and caused himself and made the Respondent Railways to initiate unavoidable action for terminating all the 10 contracts. The contention of Petitioner that the Respondent Railways have caused for contempt of Court and violated the orders dated: 10.03.2023 are not correct. As per this Hon'ble Court orders, if the petitioner is aggrieved by the decision taken by Respondent No.4 in the meeting on 20/03/2023, the petitioner should avail the remedy provided in clause 64 of Standard General Conditions of Contract.

7. Regulations for Tenders and Contracts Regulation

62(1) which deals with determination of contract owing to default of contractor reads as under :

“62.(1) Determination of Contract owing to Default of Contractor:

If the Contractor should:

- (i) Becomes bankrupt or insolvent, or
- (ii) Make an arrangement for assignment in favour of his creditors, or agree to carry out the contract under a Committee of Inspection of his creditors, or
- (iii) Being a Company or Corporation, go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or
- (iv) Have an execution levied on his goods or property on the works, or
- (v) Assign the contract or any part thereof otherwise than as provided in Clause 7 of these Conditions, or
- (vi) Abandon the contract, or
- (vii) Persistently disregard the instructions of the Engineer, or contravene any provision of the contract, or
- (viii) Fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or
- (viii) Fail to Execute the contract documents in terms of Clause 8 of the Regulations for Tenders and Contracts.
- (ix) Fails to submit the documents pertaining to identity of JV and PAN in terms of Clause 17.11 of Tender Form available in the Regulations for Tenders and Contracts.

(x) Fail to remove materials from the site or to pull down and replace work after receiving from the Engineer notice to the effect that the said materials or works have been condemned or rejected under Clause 25 and 27 of these Conditions, or

(xi) Fail to take steps to employ competent or additional staff and labour as required under Clause 26 of the Conditions, or

(xii) Fail to afford the Engineer or Engineer's representative proper facilities for inspecting the works or any part thereof as required under Clause 28 of the Conditions, or

(xiii) Promise, offer or give any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of the Railway or to any person on his or on their behalf in relation to the execution of this or any other contract with this Railway.

(xiv) (A) At any time after the tender relating to the contract, has been signed and submitted by the Contractor, being a partnership firm admit as one of its partners or employee under it or being an incorporated company elect or nominate or allow to act as one of its directors or employee under it in any capacity whatsoever any retired Engineer of the gazetted rank or any other retired gazetted officer working before his retirement, whether in the executive or administrative

capacity, or whether holding any pensionable post or not, in the Railways for the time being owned and administered by the President of India before the expiry of one year from the date of retirement from the said service of such Engineer or Officer unless such Engineer or Officer has obtained permission from the President of India or any officer duly authorized by him in this behalf to become a partner or a director or to take employment under the contract as the case may be, or

(B) Fail to give at the time of submitting the said tender:

(a) The correct information as to the date of retirement of such retired Engineer or retired officer from the said service, or as to whether any such retired Engineer or retired officer was under the employment of the Contractor at the time of submitting the said tender, or

(b) The correct information as to such Engineers or officers obtaining permission to take employment under the Contractor, or

(c) Being a partnership firm, the correct information as to, whether any of its partners was such a retired Engineer or a retired officer, or

(d) Being in incorporated company, correct information as to whether any of its directors was such a retired Engineer or a retired officer, or

(e) Being such a retired Engineer or retired officer suppress and not disclose at the time of submitting the said tender the fact of his being such a retired Engineer or a retired officer or make at the time of submitting the

said tender a wrong statement in relation to his obtaining permission to take the contract or if the Contractor be a partnership firm or an incorporated company to be a partner or director of such firm or company as the case may be or to seek employment under the Contractor.

(f) Submits copy of fake documents / certificates in support of credentials, submitted by the tenderer.

Then and in any of the said Clause, the Engineer on behalf of the Railway may serve the Contractor with a notice (Proforma at Annexure-IX) in writing to that effect and if the Contractor does not within seven days after the delivery to him of such notice proceed to make good his default in so far as the same is capable of being made good and carry on the work or comply with such directions as aforesaid of the entire satisfaction of the Engineer, the Railway shall be entitled after giving 48 hours' notice (Proforma at Annexure-X or XII, as the case may be) in writing under the hand of the Engineer to rescind the contract as a whole or in part or parts (as may be specified in such notice) and after expiry of 48 hours' notice, a final termination notice (Proforma at Annexure-XI or XIII, as the case may be) should be issued.

Note: Engineer at his discretion may resort to the part termination of contract with notices (Proforma at Annexure- IX, XII and XIII), only in cases where progress of work is more than or equal to 80% of the original scope of work.

8. Case of the Petitioner as per the averments made in the affidavit filed in support of the Writ Petition is as under :-

a) The petitioner had filed tenders for contract works with the Respondent vide Letter of Acceptance, the Respondent had terminated the contract on 04.05.2022, aggrieved by the same W.P.Nos.23748, 23749, 23750, 23751, 23752, 23753, 23754, 23755, 23756, 23757 and 27582 of 2022 had been filed and from one of the said writs filed, Petitioner had also filed a writ seeking a relief "more particularly one in the nature of writ of mandamus declaring the action of the Respondent No.4 in terminating the contract work awarded under letter of acceptance (LOA) No.GTL-South-1016/0100480044116, dt. 29.10.2021 and forfeiting the Bank Guarantee No.2420IGP003221, dt. 24.12.2021 for Rs.25,05,010/- and not considering the Petitioner representations/ letters dt. 04.03.2022, 07.04.2022, 11.04.2022, 24.04.2022, 06.05.2022 and 10.05.2022 as illegal, high handed, arbitrary in violation of principles of natural justice, contrary to the settled principles of

law and consequently direct the Respondent No.4 and 5 to restore bank guarantee for Rs.25,05,010/- by contract work awarded under the Letter of Acceptance (LOA) No.GTL-South-1016/01000480044116, dated 29.10.2021. All the said writs were dismissed vide order dated 18.01.2023 observing at Paras 44, 45 and 46 as under :

“In view of the law laid down by the Apex Court as stated supra, the petitioners in all the aforesaid writ petitions failed to explain irregularity committed by respondents in terminating the contracts. On the other hand, respondent railways established that there was delay on the part of the petitioners in all the aforesaid writ petitions in commencing and completing the work. In W.P.No.27582 of 2022 despite granting six extensions, the petitioner therein failed to complete the work and even he did not complete the work within four years from the date of LOAs. He has completed only 49% of work. In other writ petitions, the petitioner failed to commence work even after 7 months period from the date of LOA.

45. In all the aforesaid contracts, there was delay on the part of the petitioner in furnishing performance bank guarantee. The petitioners in all the aforesaid writ petitions failed to establish any irregularity either procedural or legal including violation of the procedure

laid down under LOA/Contract Agreement and GCC and therefore, the petitioners are not entitled for any relief much less relief sought in these writ petitions. Therefore, these writ petitions are liable to be dismissed.

b) It is further the case of the Petitioner that aggrieved by the said order passed in W.P.No.23748 of 2022 Petitioner herein preferred W.A.No.301/2023 and the Division Bench of this Court vide its orders dt. 10.03.2023 in W.A.No.301 of 2023 disposed of the said Writ Appeal with certain specific observations as extracted below:-

“Having said that we are of the view that appellant should be relegated to the forum of respondent No.4. Now that appellant is aware of the reasons for termination of contract, let the appellant appear before respondent NO.4 on 20.03.2023 at 11.00 am whereafter respondent No.4 shall take a fresh decision in accordance with law. All contentions are kept open. Needless to say, if the appellant is aggrieved by any decision that may be taken by respondent No.4, it will be open to the appellant to avail the remedy as provided in clause 64 of the Standard General of Contract.

This disposes of the writ appeal. However, there shall be no order as to costs."

c) It is further the case of the Petitioner that the Petitioner appeared before Respondent No.4 on 25.03.2023 at 11.00 a.m., for the Respondents to take a fresh decision in accordance with law. The petitioner was present before the Respondent but however, the Petitioner received letter/response dated 24.04.2023 from the Respondent No.4 from which the Petitioner noted that the Respondent did not change the decision of cancelling the tenders issued to the Petitioner followed by calling of fresh tenders. Aggrieved by the said letter dated 24.04.2023 vide No.G/W.148/South/WA-III, Petitioner approached the Court by filing the present writ petition.

9. The learned Senior counsel Mr. L.Ravi Chander appearing on behalf of the Petitioner mainly puts-forth the following submissions :

a) The Hon'ble Division Bench after its deliberations vide its order dated 10.03.2023 in W.A.No.301 of 2023

expressed a view that the Petitioner must be relegated to the Forum of the Respondent No.4 and also clearly specified time and date, for such compliance dated 20.03.2023 at 11.00 a.m. and further directed the Respondent No.4 there under to take fresh decision. But however, the order impugned had been passed in clear violation of Hon'ble Division Bench orders dated 10.03.2023 in W.A.No.301 of 2023.

b) The Division Bench in the order dated 10.03.2023 in W.A.No.301 of 2023 directed the Respondents to review their decision and the Respondents in the order impugned dated 24.04.2023 did not review the cancellation instead they confirmed the same and went ahead with 10 new tenders for proposed construction of Road Under Bridges No.255A and 255B (sub-way).

c) The Respondents did not genuinely consider the Court direction dated 10.03.2023 in W.A.No.301 of 2023 they have only perused the record and mechanically denied grant of relief to the Petitioner.

d) The specific case of the Petitioner is that the Respondents have terminated the contracts illegally without issuing due notice and adequate opportunity of hearing to the Petitioner in clear violation of principles of natural justice duly recording a clear finding in favour of the Petitioner herein that in the present case there is clear violation of principles of natural justice in as much as due notice and adequate opportunity of hearing was not granted to the Petitioner before cancellation of the contract.

e) In spite of the said specific direction and observations in the Writ Appeal order dated 10.03.2023 passed in W.A.No.301 of 2023, the order impugned dated 24.04.2023 had been issued holding that the decision taken by this office stands good.

f) The Respondent reiterated its decision of cancelling Petitioner contract works without issuing appropriate notice to the Petitioner without deciding the issue afresh since the Division Bench in its orders dated 10.03.2023 in W.A.No.301 of 2023 very clearly

observed that the Respondent No.4 shall take a fresh decision in accordance with law.

g) It is the specific case of the Petitioner that the Petitioner did not receive any communication to the Petitioner mail ID and no evidence is on record to prove or indicate that the communication had been sent to the Petitioner prior to cancellation of the contract of the Petitioner.

h) Basing on the aforesaid submissions on the point of violation of principles of natural justice and violation of the orders of Division Bench of this Court dated 10.03.2023 in W.A.No.301 of 2023, the Learned Senior Counsel appearing on behalf of the Petitioner contended that the writ petition should be allowed as prayed for.

i) This Court passed interim orders in favour of the Petitioner on 11.05.2023 in I.A.No.1 of 2023 in W.P.No. 13266 of 2023 and the said orders are in force as on date.

10. Learned Senior Counsel appearing on behalf of the Respondents mainly puts-forth the following submissions :

a) Though 7 month period elapsed the Petitioner company had not commenced the work as per LOAs issued to the Petitioner, the contract agency should commence the work within 15 days duly mobilizing their resources to respective locations, hence the Railway authorities terminated the contract work entrusted to the Petitioner.

b) Petitioner was issued 7 days notice initially, 48 hours notice subsequently and the contracts were terminated and the performance guarantee amounts were forfeited as per the terms and condition of tenders and GCC. All the notices have been sent to the Petitioner's ID in Indian Railway – Work Contract Management System (IR-WCMS) (Online platform for making agreements, recording bills, paying bills, granting extension of currency, issuing notice).

- c) There is no violation of principles of natural justice as the notices were sent to the registered mail ID of the Petitioner.
- d) The plea of the Petitioner that communication is not received from IRWCMS is incorrect.
- e) For all the 10 contracts, 7 days notices and 48 hours notices were sent to the mail ID registered by the Petitioner in their bid i.e., sanyu-infra@yahoo.com and termination notices were also sent to the same mail ID on 04.05.2022 and all the notices communicated to the Petitioner in screenshot when the Petitioner attended the 4th Respondent Office on 20.03.2023.
- f) If the Petitioner is aggrieved by the impugned proceedings dt. 24.04.2023, Petitioner can avail remedy under Clause 64 of Standard General Conditions of Contract and the present writ petition is not maintainable since the issue pertains to the tenders.

On the basis of the aforesaid submissions learned
ASG Senior Designate Counsel Mr. Narasimha Sarma

submits that the interim orders need to be vacated and the writ petition needs to be dismissed.

DISCUSSION AND CONCLUSION :

11. A bare perusal of the impugned order dt. 24.04.2023 vide No.G/W148/South/WA-III, clearly indicates that it is contrary to the directions of the Division Bench in W.A.No.301/2023, dated 10.03.2023 since it is specifically observed in the said order that the Respondent No.4 shall take a fresh decision in accordance with law.

12. A bare perusal of the impugned order dt. 24.04.2023 indicates that no effort had been put-forth by the Respondent No.4 in deciding the whole issue afresh again. For Respondent No.4 to take a fresh decision in accordance with law would mean reconsideration of whole issue afresh again. A bare perusal of Indian Railways Standard General Conditions of Contract July 2020 – Clause 4 reads as under :

"4.Communications to be in writing: All notices, communications, references and complaints made by the Railway or the Engineer or the Engineer's

representative or the Contractor *inter se* concerning the works shall be in writing or e-mail on registered e-mail IDs and no notice, communication, reference or complaint not in writing or through e-mail, shall be recognized."

13. Therefore, there is clear indication that all communications are to be in writing. All notices, communications, reference and complaints made by the Railways or the Engineer or the Engineer's Representative, or the Contractor inter-se concerning the works shall be in writing or e-mail on registered e-mail IDs. No notice, communication, reference or complaint not in writing or through e-mail shall be recognized. It is the specific case of the Petitioner that Petitioner was not put on notice prior to the termination of the contract on 04.05.2022 and a bare perusal of the order impugned dt. 24.04.2023 does not indicate any discussion on the pleas put-forth by the Petitioner in the meeting held on 20.03.2023 in the Respondent Office except stating that Petitioner's main contention was that no notices of the office were received and the order impugned curiously records the conclusion

arrived at stating that the notices were present in Petitioner's ID and were visible when the Petitioner opened Petitioner's ID when the Petitioner came to DRM Office in May 2022 and stating that the Petitioner did not receive any notice is not correct on Petitioner's part and hence the decision taken by the office stands good.

14. Petitioner filed reply affidavit and in particular para 10 of the reply affidavit reads as under :

"10. I submit that Respondent did not change the decision of cancelling my contract works, without appropriate notice. It is stated that all communications relating to Termination of Contracts were only uploaded on the Portal, the Petitioner did not receive any Notice of termination, straightaway they had only received a letter that their tenders will be cancelled and the balance work will be taken care by a different Petitioner, after which they notified the Respondents of not receiving any communications, on the email-ID identified mutually. Therefore such communications must have been received through Notices under the Clauses 4 & 5 of the GCC. There was inordinate delay in the Respondents submitting the Thrust Bed drawings, failed to cover the Petitioner on cable clearances, no access to IRWCMS portal before such termination of tenders/contracts,

without any which the Petitioner cannot mark the areas to begin working on the level crossing areas. It is not correct to say that the Respondents have no hope that the petitioner can execute the works and therefore no fresh decision was taken, even following the WA 301 of 2023 Orders of the Honourable Division Bench, dated: 10.03.2023. more so without any fresh consideration and having been in absolute dis-regard, of the Writ Appeal Orders, they cannot admit to suggest that it is open to this Petitioner to avail the remedy as under Clause 64 of the Standard General Conditions of Contract. The Respondents are wrong and not mindful when questioning the maintainability of the Writ Petition, as same is a mirror reflection of Respondent failure to comply with the fresh decision being taken, as the Petitioner is now relegated to the forum, in spite of a Division Bench of this Court, by order dt.10.03.2023 in WA.NO.301 of 2023, having held that -

- i) as per Clause 4 of Standard General Conditions of Contract all notices. communications, etc., to be in writing or to the registered e-mail IDs of the affected party and that having not been done so amounts to violation of principles of natural justice, by the impugned order the respondents have not stated as to which e-mail ID the notices have been sent nor delivered in person,
- ii) though in the impugned order, the respondents mention of sending all correspondences to the e-mail ID

created by the petitioner on IRWCMS portal, no details of such e-mail ID to which the decision of the respondents has been communicated through IRWCMS portal, is mentioned therein,

iii) the impugned order passed by the 4th respondent is thus contrary to the directions of the Division Bench of this Court in as much as it does not mention the registered e-mail ID to which the communications have been sent and also no fresh consideration of the matter has been undertaken as directed.

15. It is settled law that when a statute describes or requires a thing to be done in a particular manner; it should be done in that manner or not at all. The Andhra Pradesh High Court in the order dated 24.10.2017 in M. Shankara Reddy v. Amara Ramakoteswara Rao, reported in 2017 SCC OnLine Hyd 426.

16. This Court opines that fairness in action requires that procedures which permit impairment of Fundamental Rights ought to be just, fair, and reasonable. The Apex Court in its judgment dated 27.03.2023 in State Bank of India and others v Rajesh Agarwal and others at para 85 observed as under:

“The principles of natural justice have a universal application and constitute an important facet of procedural propriety envisaged under Article 14. The rule of *audi alteram partem* is recognized as being a part of the guarantee contained in Article 14. A Constitution Bench of this Court in *Tulsiram Patel* (supra) has categorically held that violation of the principles of natural justice is a violation of Article 14. The court held that any state action in breach of natural justice implicates a violation of Article 14.

The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action it is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also

where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

17. A bare perusal of the Regulation 62(1) (referred to and extracted above) clearly indicates that the Respondent authority has clearly violated not only the Division Bench orders of this Court dt. 10.03.2023 in W.A.No.301/2023, but also the mandatory procedure as contemplated under the Regulations in force to be adopted by the Respondent authority.

18. In so far as the maintainability of the present writ petition is concerned this Court refers to the following Judgements of the Apex Court and holds that the present writ petition is maintainable:

1. The Calcutta High Court in judgment dated 06.04.2022 in Radhey Shyam Pandey vs. Union of India in WPA No.10668 of 2021 observed that this Court can exercise the extraordinary jurisdiction under Article 226 of the Constitution of India in Tender matter where there is lack of

transparency, violation of procedure contemplated etc.

2. The Apex Court in a judgement dated 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries vs. State of Himachal Pradesh referring to Whrilpool Corporation vs. Registrar of Trade Marks (reported in 1998 (8) SCC 1) at para 15 and further the said view being reiterated by a Full Bench of the Apex Court (Three Judges) in a judgment reported in 2021 SCC online SC page 801 in Magadh Sugar and Energy Limited v State of Bihar and others dated 24.09.2021, observed as under:

“The principles of law which emerge are that

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of

the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

3. The Apex Court in ANANDI MUKTA SADGURU SHREE MUKTA v. V.R.RUDANI AND OTHERS", reported in 1989 AIR 1607, in the judgment dated 21.04.1989 observed at para Nos. 6, 8 and 9 of the said Judgment, as under:

"(6) Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative

writs. Under Article 226, writs can be issued to “any person or authority”. It can be issued “for the enforcement of any of the fundamental rights and for any other purpose.”

(8) The words “any person or authority” used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

(9) Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute.”

19. The Apex Court in judgment reported in 2023(2) SCC page 703 in M.P.Power Management Company Limited, Jabalpur v Sky Power Southeast Solar India Private Limited and others at para 82.1 and 82.3 of the said judgment held that if action/inaction of State is *prima facie* arbitrary writ petition would be maintainable even if the action of the State is in relation to a non-statutory contract.

20. Professor de Smith states: “To be enforceable by mandamus a public duty does not necessarily have to

be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract, this court opines that Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226 and further the said view being reiterated by a Full Bench of the Apex Court (Three Judges) in a judgment reported in 2021 SCC online SC page 801 in Magadh Sugar and Energy Limited v State of Bihar and others dated 24.09.2021, this Court, rejects the contention urged on behalf of the Counsel for the Vacate Stay Petitioner about the maintainability of the present writ petition."

21. Taking into consideration the fact that the order impugned dated 24.04.2023 vide No.G/W.148/South /WA-III, is not in true spirit of the orders of the Division Bench of this Court dated 10.03.2023 passed in W.A.No.301 of 2023 and duly taking into consideration the specific averments made at para 10 of the reply affidavit filed by the Petitioner (referred to and

extracted above) and on perusal of the relevant guidelines pertaining to Regulations for Tenders and Contracts – Annexure IX, X, and XI and Regulation 62(1) of Indian Railways Standard General Conditions of Contract, July 2020, which clearly indicate a prescribed proforma of 7 day notice, 48 hours notice and termination notice which further specifically indicates that the notice should be Registered Acknowledgment Due and not through e-mail which admittedly even as per the counter affidavit filed by the Respondents and also as per the contents of the impugned order dated 24.04.2023 clearly indicates has not been admittedly followed in the present case, and duly taking into consideration the view taken by the Calcutta High Court in judgment dated 06.04.2022 in Radhey Shyam Pandey vs. Union of India in WPA No.10668 of 2021, judgment dated 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishan Industries vs. State of Himachal Pradesh referring to Whirlpool Corporation vs. Registrar of Trade Marks (reported in 1998 (8) SCC 1), which had been reiterated

by a Full Bench of the Apex Court (Three Judges) in its judgment dated 24.09.2021 reported in 2021 SCC on line SC 801 in Magadh Sugar and Energy Limited v State of Bihar and others. The Apex Court in ANANDI MUKTA SADGURU SHREE MUKTA v. V.R.RUDANI AND OTHERS", reported in 1989 AIR 1607 and the judgment of the Apex Court reported in (2023) 2 SCC 703 in M.P.Power Management Company Limited, Jabalpur Vs. Sky Power South East Solar India Private Limited & Others and M. Shankara Reddy v. Amara Ramakoteswara Rao, 2017 SCC OnLine Hyd 426, the writ petition is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 21.12.2023

Note: L.R. copy to be marked
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