

GAHC010170652022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5566/2022

ARSS TECHNOCOM PRIYASHI AASHI (JV)
A JOINT VENTURE GROUP HAVING ITS OFFICE SITUATED AT KAMRUP
CHAMBER ROAD, FANCY BAZAR, GUWAHATI- 781001.
IN THE PRESENT PROCEEDING THE JOINT VENTURE PETITIONER IS
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER NAMELY SRI
VIKRAM DIDWANIA,
S/O LATE SAJJAN DIDWANIA,
AGED ABOUT 44 YEARS,
R/O KAMRUP CHAMBER ROAD, FANCY BAZAR, GUWAHATI- 781001.

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY SECRETARY, MINISTRY OF RAILWAYS, RAILWAY BOARD, NEW
DELHI.

2:THE GENERAL MANAGER
N F RAILWAY
MALIGAON
GHY-11.

3:THE DIVISIONAL ENGINEER
TINSUKIA DIVISION-ENGINEERING
N F RAILWAY
TINSUKIA.

4:THE DIVISIONAL RAILWAY MANAGER
N F RAILWAY
TINSUKIA.

5:SR. DIVISIONAL ENGINEER/C
O/O THE DRM

TINSUKIA
N F RAILWAY
TINSUKIA.

6:THE CHIEF TRACK ENGINEER
N F RAILWAY
MALIGAON
GUWAHATI- 781011

Advocate for the Petitioner : MR. A GOYAL, MR. A CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I., MR. C K S BARUAH, CGC

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

16.12.2024

1. Heard Mr. A. Goyal, learned counsel for the petitioner. Also heard Mr. C.K.S. Baruah, learned CGC for all the respondents.

2. The petitioner is aggrieved with the termination of his contract. The petitioner's case is that he was awarded a contract by the NF Railway Authorities which was required to be completed within July, 2022, after extension periods had been given for completion of the work. However, the contract was rescinded/terminated by the Divisional Railway Manager, NF Railway, vide termination notice dated 01.09.2021. The Earnest Money and Performance Guarantee Money that had been deposited by the petitioner were also to be forfeited, as per the letter dated 02.09.2021 issued by the NF Railway.

3. The petitioner had previously approached this Court, vide WP(C) 4421/2021, wherein he had put to challenge the notice dated 25.08.2021 issued by the NF Railway, the termination notice dated 01.09.2021 and the forfeiture notice dated 02.09.2021. This Court, on considering the submission made by the petitioner's counsel, had disposed of WP(C) 4421/2021 vide order dated 24.06.2022, by directing the authorities to sit across the table with the petitioner and take a decision with regard to the contract in question, keeping in mind the public interest at large, inasmuch as, the petitioner was willing to execute the work at the same price and within a mutually agreeable timeframe.

4. In pursuance to the order dated 24.06.2022 passed in WP(C) 4421/2021, a meeting was held on 19.07.2022. After deliberations on the issues, the respondents felt that no public interest would be served by reviving the terminated work with the petitioner, who had already been given opportunities twice earlier and had failed to supply ballast, leading to serious safety implications for running trains.

5. The office of the Divisional Railway Manager (W), NF Railway, Tinsukia thereafter wrote a letter dated 18.08.2022 to the petitioner, stating that the termination of the contract remained valid and that the Security Deposit would be forfeited as per the Contract Agreement.

6. Mr. A. Goyal, learned counsel for the petitioner submits that the impugned letter dated 18.08.2022 has not been made in terms of the termination passed by this Court in WP(C) 4421/2021, wherein the parties were directed to sit

across the table and take a decision in the matter keeping in mind the public interest at large, as the petitioner was willing to execute the work at the same price and within a mutually agreeable timeframe. The petitioner's counsel submits that after termination of the contract with the petitioner, the contract had been awarded to a 3rd party, which contract was also terminated subsequently. He submits that the contract is not executable.

7. Mr. C.K.S. Baruah, learned CGC for all the respondents, on the other hand submits that the decision taken in letter dated 18.08.2022, not to revive the contract with the petitioner, has been taken after careful consideration of the matter, keeping in mind the fact that the petitioner was a habitual defaulter, who had already been given two opportunities to supply ballast. He also submits that the petitioner had completed only 4.06% of the work, as stated in paragraph 20 and 22 of the affidavit-in-opposition filed by the respondent nos.1 to 6. The learned CGC further submits that as there is an arbitration clause, the petitioner can avail of the arbitration clause provided in the Contract Agreement for redressal of his grievance.

8. Mr. A. Goyal, learned counsel for the petitioner submits that the submission made by the counsel for the respondents with regard to the percentage of the contract work done by the petitioner is not correct.

9. I have heard the learned counsels for the parties.

10. The letter dated 18.08.2022 issued by the Divisional Railway Manager

(W), NF Railway, Tinsukia in compliance with the order dated 24.06.2022 passed in WP(C) 4421/2021, states as follows :

“In view of the above deliberations, railway feels that no public interest will be served by reviving the terminated contract of M/s ARSS-Technocom -Priyashi Aashi (JV) who had already been given opportunities twice earlier and had failed to supply ballast leading to serious safety implication for train running. Since the petitioner is a habitual defaulter, the competent authority therefore, endorse the action taken to terminate the contract as per the clause 62 of the Standard GCC, which stands valid and the Security Deposit will be forfeited as per the Contract Agreement.”

11. Paragraph-20 and 22 of the affidavit-in-opposition filed by the respondent nos.1 to 6 states that as per supply schedule dated 12.04.2021, the petitioner had supplied only 1958 cum of ballast from April 2021 to August 2021, which was 4.06% progress against the targeted supply.

12. The denial of the said figure by the counsel for the petitioner clearly shows that there are disputed questions of fact. Clause 64 of the Contract Agreement provides for settlement of disputes by way of arbitration under the Arbitration & Conciliation Act, 1996.

13. In view of there being an efficacious alternative remedy available, by way of an arbitration clause for settlement of disputes between the parties, this Court is of the view that the petitioner would have to avail the arbitration clause, for settlement of the dispute between the parties.

14. Accordingly, this writ petition is dismissed, with liberty being given to the

petitioner to avail the arbitration clause for redressal of his grievance.

JUDGE

Comparing Assistant