



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO. 28374 OF 2026 (GM-TEN)

BETWEEN:

M/S THARU AND SONS
A PARTNERSHIP FIRM,
REPRESENTED BY ITS MANAGING PARTNER,
HAVING ITS OFFICE AT KARIPAYI ROAD,
RAJAGIRI POST,
SOUTH KALAMASSERY, ERNAKULAM,
KERALA - 683 104.
GEM SELLER ID 182F200001245477

...PETITIONER

(BY SRI. G. KRISHNA MURTHY, SENIOR ADVOCATE FOR
SRI. BAPAT SAMPATH VINAYAKA RAO, ADVOCATE)

AND:

1. THE UNION OF INDIA
REP. THE GENERAL MANAGER
SOUTH WESTERN RAILWAY,
HUBBALLI, KARNATAKA - 580 020.
2. THE DIVISIONAL RAILWAY MANAGER
SOUTH WESTERN RAILWAY,
BANGALORE DIVISION,
BENGALURU - 560 023.
3. THE SENIOR DIVISIONAL MECHANICAL ENGINEER
(SR. DME/SBC)
OFFICE OF THE DIVISIONAL RAILWAY MANAGER
(3RD FLOOR), MECHANICAL BRANCH,
SOUTH WESTERN RAILWAY,
BENGALURU - 560 023.





CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

4. THE CHIEF EXECUTIVE OFFICER,
GOVERNMENT E-MARKETPLACE (GEM)
DEPT. OF COMMERCE,
MINISTRY OF COMMERCE AND INDUSTRY
GOVT. OF INDIA, NEW DELHI

...RESPONDENTS

(BY SRI. K. ARAVIND KAMATH, ASG A/W
SRI. MS. SAFALYA WAGLE, ADVOCATE FOR C/R1 TO R4;
SRI. KARAN JOSEPH, ADVOCATE FOR R5)

THIS W.P IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO WRIT OF CERTIORARI
OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION,
TO QUASH THE CANCELLATION REQUEST DATED 03.09.2026
INITIATED BY RESPONDENT NO.4 ON THE GEM PORTAL
BEARING NO.B/M.271/CONT/LINEN DISTRIBUTION/SBC VIDE
ANNEXURE-F.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA

ORAL ORDER

The present writ petition is filed seeking for the following
reliefs:

*a) a Writ of Certiorari or any other appropriate Writ,
Order or Direction, to quash the cancellation request
dated 03.09.2026 initiated by Respondent No.4 on the
GeM Portal vide Annexure-F bearing No. B/M.
271/cont/Linen Distribution / SBC.*

*b) Declare that the withdrawal of the procurement
request dated 03.09.2026 initiated by Respondent No.4
on the GeM Portal has no legal effect on the concluded
contract between the Petitioner and the Respondents;
ANNEXURE - F*

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA



CNR: KAHC010628952026

c) Pass any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice."

2. Respondent No.4 - South Western Railway, Bangalore Division¹ issued a tender notification dated 02.05.2026² on the Government eMarketplace Portal³ for the work of "Provision of Linen Distribution Services in Air Conditioned Coaches of Primary Trains at SBC Coaching Depot", Bangalore for a period of four years on "manpower basis". The petitioner, a partnership firm participated in the impugned tender and submitted its technical and financial bids. The petitioner was declared as the lowest bidder and Letter Of Acceptance dated 24.08.2026 (Annexure-A to the writ petition) has been issued, consequent to which Contract dated 24.08.2026 has also been generated online. Subsequently, the Railways issued a communication dated 31.08.2026 (Annexure-E to the writ petition), whereunder the petitioner was advised to commence the services before 08.09.2026 after fulfilling all the stipulated mandatory conditions, failing which penalty of

¹ Hereinafter referred to as 'Railways'

² Hereinafter referred to as 'impugned tender'

³ Hereinafter referred to as 'Portal'



NC: 2026:KHC:53986
WP No. 28374 of 2026

₹5,00,000/- would be levied per day. Thereafter, vide communication dated 03.09.2026⁴ (Annexure-F to the writ petition), the Letter Of Acceptance issued to the tenderer was cancelled. Subsequently, the petitioner made a representation dated 04.09.2026 (Annexure-H to the writ petition). Assailing the communication dated 03.09.2026, whereunder the Letter Of Acceptance, was cancelled, the present petition is filed seeking for the aforementioned reliefs.

3. It is the case of the respondents that the Letter Of Acceptance issued to the petitioner was cancelled since the petitioner had an invalid Micro Small Enterprise⁵ exemption as on the date of opening of the tender.

4. It is relevant to notice the impugned communication, which reads as under:

"Ref:

- 1. Cancellation Request initiated by Railway Administration in GeM.*
- 2. Letter of Acceptance (Work Order) bearing No. GEMC-511687795259023 dated 24.08.2026.*
- 3. Tender Notice No. GEM/2026/B/7485297 dated 02.05.2026.*

⁴ Hereinafter referred to as 'impugned communication'

⁵ Hereinafter referred to as 'MSE'



CNR: KAHC010628952026

With reference to the above, it is informed that the Letter of Acceptance (Work Order) bearing No. GEMC-511687795259023 dated 24.08.2026 was issued in favour of your firm for the subject work.

On subsequent review of the matter, the Competent Authority has decided to cancel the above Letter of Acceptance, as the particular order was placed erroneously by the buyer - because of Invalid MSE exemption on date of opening of tender i.e. 23.05.2026. Accordingly, the buyer has initiated a cancellation request in the GeM portal in respect of the above LOA.

You are therefore requested to accept the cancellation withdrawal request initiated by the buyer in the GeM portal at the earliest, so as to enable completion of the cancellation process.

This issues with the approval of the Competent Authority."

(emphasis supplied)

5. In this context, it is pertinent to note that the petitioner was a Small Enterprise under the provisions of the Small and Medium Enterprises Development Act, 2006⁶ up to 26.06.2022 for the year 2022-23. Thereafter, the petitioner was classified as a Medium Enterprise from 09.05.2023 from the year 2023-24 onwards. Under the notification dated 18.10.2022 in the case of an upward change in the classification, the enterprise in question is entitled to avail the benefits before its

⁶ Hereinafter referred to as 'MSMED Act'



re-classification for a period of three years from the date of such upward change. Accordingly, the petitioner was entitled to claim the benefit as a Small Enterprise up to 08.05.2026.

6. With regard to the tender in question, the exemption for a Small Enterprise would be for the purpose of claiming an exemption from making the Earnest Money Deposit⁷ and certain purchase preferences. The petitioner had claimed the exemption from making EMD with respect to the tender in question.

7. In this context, it is pertinent to note that the tender condition at Sl.Nos.1 and 2, stipulate the mandatory documents that were to be produced, which is extracted hereunder for ready reference:

Sl.No.	Description of the documents	Remark
	Mandatory documents	
1	<i>The firms should submit EMD receipt/MSE certificate as mandatory document to show payment of EMD money. <u>The firms which are claiming exemption from EMD must submit valid MSE/UDYAM certificate, it should be registered for the services as per similar service defined in the tender document otherwise the bid will be summarily rejected. The tenderer has</u></i>	

⁷ Hereinafter referred to as 'EMD'



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

	<i>to submit valid documentary evidence for the same. If the documentary evidence is not submitted/uploaded along with the tender document; the offer will be summarily rejected. <u>The document should be valid as on date of opening of tender else the offer will be summarily rejected.</u></i>	<i>The bid shall be summarily rejected if the bidder fails to submit these documents along with the bid.</i>
2.	<i><u>Undertaking for truthfulness of documents uploaded by the tenderer (Annexure-1)</u></i>	

(emphasis supplied)

8. The tender in question was opened on 21.05.2006. Admittedly, as on the date of opening of the tender, the petitioner could not claim the benefit of exemption as a Small Enterprise.

9. It is the contention of the petitioner that the work in question pursuant to the petitioner being declared as the lowest tenderer having been awarded and the contract having been entered into on 24.08.2026, the same could not have been unilaterally cancelled/terminated in the manner in which it has been done i.e., by withdrawing the Letter Of Acceptance and the parties will have to work out their remedies under the contract in question. In this regard, reference is also made to the communication dated 31.08.2026 (Annexure-E to the writ

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

petition), whereunder the petitioner was called upon to commence the works consequent to the tender being awarded, failing which the petitioner was notified of being levied with the penalty.

10. In support of the contention put forth on behalf of the petitioner, reliance is placed by the learned Senior Counsel for the petitioner on the judgment of a Co-ordinate of this Court in the case of ***M/s.Allengers Medical Systems Ltd., Chandigarh v. State of Karnataka***⁸ (1), whereunder it has been held as under:

"15. A notice inviting tender can be withdrawn or cancelled only upto a particular stage. Once it crosses the said stage, any unilateral cancellation would be an arbitrary exercise of power. The Tender Inviting Authority is empowered to cancel the tender prior to notification of award and execution of the contract. Once the award is notified and contract is executed it becomes a concluded process of tender. The tender then can be cancelled only on violation of conditions of agreement or award by the tenderer. Any unilateral cancellation of tender in the midstream or after execution of the contract cannot be countenanced, more particularly, when the contracting authority is a State under Article 12 of the Constitution of India.

16. Article 14 of the Constitution of India mandates that every action of the State should pass through the golden

⁸ AIR 2023 KARNATAKA 50



CNR: KAHC010628952026

thread of non-arbitrariness. It is not in dispute that the 2nd respondent is a State under Article 12 of the Constitution of India. Being a State it would not behave of the 2nd respondent to act arbitrarily; arbitrary, I say so, for the reason that the petitioner emerges as the successful bidder in the tender pursuant to a notice inviting tender which was by itself a re-tender; petitioner was called for price negotiation; price negotiation was successful and the award was notified in favour of the petitioner on 02-03-2022. The Notification of award directed execution of contract and production of demand draft for Rs. 56,87,841/-. The petitioner complied with all the aforesaid conditions i.e., executes the agreement and submits the demand draft for the amount way back in the month of March 2022. All that remained was issuance of purchase order by the 2nd respondent in favour of the petitioner."

(emphasis supplied)

11. However, the said judgment in the case of ***M/s.Allengers Medical Systems Ltd., Chandigarh***⁸ would not aid the case of the petitioner, inasmuch as the fact situation in the said case and the present case are completely different. In the said case, the Co-ordinate Bench dealing with a fact situation wherein after the petitioner therein was notified of the award in its favour pursuant to a tender that was issued and an agreement was signed between the parties, no purchase order was issued in terms of the tender notification and agreement entered between the parties. The petitioner therein had



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

approached this Court for issuance of the purchase order. After issuance of notice in the said writ petition, the tender was cancelled. In the said fact situation, the correctness or otherwise of the cancellation of tender process was the subject matter of consideration before this Court.

12. Reliance is also placed by the learned Senior Counsel for the petitioner on the Division Bench judgment of Himachal Pradesh High Court in the case of **Karanraj Singh v. State of H.P⁹**, whereunder it has been held as under:

"15. It is no longer res integra that where a breach of contract involves the decision-making authority exceeding its power or violating the principles of natural justice or its decision being borne out of perversity, then such cancellation of contract can certainly be scrutinized under the writ jurisdiction.

16. It needs to be remembered that cancellation of a contract deprives a person of his valuable rights and is a very drastic step, often due to significant investments having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can easily be trampled by the State, they would be dissuaded from participating in public procurement processes, which may have a negative impact on such

⁹ AIR 2025 HIMACHAL PRADESH 106



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest.

19. Since there are no legal or valid grounds forthcoming, which could have justified withdrawal of the tender awarded in favour of the petitioner, we find no hesitation to conclude that the instant case is a classic case of exercise of arbitrary powers by the official respondents in withdrawing the tender that was awarded in favour of the petitioner.

20. Thus, for the aforesaid forgoing reasons, we find merit in this petition and the same is accordingly allowed. Consequently, the impugned letter dated 5.9.2023, whereby the respondents had withdrawn the award from the petitioner, is quashed and set aside. The respondents are directed to award the work in favour of the petitioner and thereafter permit him to complete the same. The official respondents shall be at liberty to work out settlement with the petitioner given the fact that merely 20% of the work in question stands completed by another party."

(emphasis supplied)

13. The said judgment also would not aid the case of the petitioner inasmuch as the same was in a different fact situation as that of the present case. In the said case, after tender was awarded in favour of the writ petitioner, after a period of two and a half months' the tender was withdrawn "due to administrative reasons". The said withdrawal was the subject matter of consideration in the said judgment.

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA



14. Reliance is placed on behalf of the petitioner on two other judgments. However, the said judgments are also in entirely different fact situations, wherein after completion of the tender process and after awarding of the tender, the same was sought to be cancelled due to various reasons not attributable to any misrepresentation made by the successful tenderer, as in the present case.

15. Learned Additional Solicitor General, justifying the impugned communication submits that the petitioner has misrepresented the fact that it is entitled to claim benefits as a Small Enterprise under the MSMED Act and the notification dated 18.10.2022. Having regard to the fact that the petitioner misrepresented and claimed exemption, the respondents were justified in issuing the impugned communication. It is further submitted that the reason for the cancellation of the petitioner erroneously claiming exemption of EMD and purchase preferences was also communicated to the petitioner. On behalf of the respondents, reliance is also placed on the communication dated 11.09.2026 which was issued in furtherance of the Letter of Acceptance dated 24.08.2026, impugned communication



NC: 2026:KHC:53986
WP No. 28374 of 2026

dated 03.09.2026 as well as the letter of the petitioner dated 11.09.2026. The said communication issued on behalf of the respondents is extracted hereunder for ready reference:

"Sub: Intimation of cancellation of Work - Reg.

Ref:

- 1. Letter of Acceptance (Work Order) No. GEMC-511687795259023 dated 24.08.2026.*
- 2. This office letter regarding withdrawal/cancellation of the above Work Order dated 03.09.2026.*
- 3. Your letter No. TS-301/SBC-ACCA/03 dated 11.09.2026.*

With reference to the above and your letter cited at Sl. No. 3, wherein your firm has initiated to submit the Performance Guarantee, it is informed that the Competent Authority has already decided to withdraw/cancel the subject GeM Work Order/LOA, as communicated to your firm vide this office correspondence cited at Ref. 2. In view of the decision already taken for withdrawal/cancellation of the GeM Work Order, submission of the Performance Guarantee is not required and the Performance Guarantee will not be accepted.

It is also informed that the cancellation request initially raised by the Railway Administration on the GeM portal on 03.09.2026 was rejected by you. Subsequently, a fresh cancellation request was initiated by the Buyer on 08.09.2026, which was also rejected by you. Consequently, the said cancellation request has now been force cancelled by the Buyer in the GeM portal, as per the provisions prescribed by GeM.

In view of the above, you are advised not to commence or undertake any activity in connection with the subject work.

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

This issues with the approval of the Competent Authority."

(emphasis supplied)

16. Reliance is also placed by the respondents on Section 19 of the Indian Contract Act, 1872¹⁰, which reads as under:

"19. Voidability of agreements without free consent.—

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable."

(emphasis supplied)

¹⁰ Hereinafter referred to as 'Act'



17. It is clear from the aforementioned factual matrix that admittedly, the petitioner did not have the exemption as a Small Enterprise as on the date of opening of the tender documents.

18. It is the vehement contention put forth on behalf of the petitioner that as on date of making the bid for the tender in question, the petitioner had a valid exemption as was sought. It is further contented that all the documents that have been submitted by the petitioner have been scrutinized, consequent to which the tender had been awarded in its favour. However, the said contentions will not aid the case of the petitioner in view of the specific stipulation contained at Sl.No.(1) of the tender conditions, which require the documents produced along with the tender to be valid as on the date of opening of the tender. It is further specifically stipulated in clause(1) of the tender conditions that the respondent authorities would summarily reject the tender, in the event the documents are not found to be valid.

19. On behalf of the respondents, it is also contented that under clause(2) of the tender conditions, the petitioner was



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

required to give an undertaking for the truthfulness of the documents uploaded by the tenderer and the said undertaking was to be furnished as per Annexure-A1 of the tender documents. Specific reliance is placed by the respondents on the nature of undertaking given by the petitioner along with the tender documents. It is pertinent to notice the format of the Certificate issued by the petitioner undertaking the truthfulness of the documents uploaded, which has been specifically relied upon by the respondents. The said Format is as under:

"FORMAT FOR UNDERTAKING CERTIFICATE BY THE
BIDDER FOR TRUTHFULNESS OF DOCUMENTS
UPLOADED

*I.....(Name and designation)**appointed as the attorney/authorized signatory of the tenderer (including its constituents), M/s (hereinafter called the tenderer) for the purpose of the Tender documents for the work of as per the tender No..... of (Railway)**, do hereby solemnly affirm and state on the behalf of the tenderer including its constituents as under:*

- 1. I/we the tenderer (s) am/are signing this document after carefully reading the contents.*
- 2 I/We the tenderer(s) also accept all the conditions of the tender and have signed all the pages in confirmation thereof.*
- 3. I/we hereby declare that I/we have downloaded the tender documents from Indian Railway website*

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA



CNR: KAHC010628952026

NC: 2026:KHC:53986
WP No. 28374 of 2026

www.GeM.gov.in. I/we have verified the content of the document from the website and there is no addition, no deletion or no alteration to the content of the tender document. In case of any discrepancy noticed at any stage i.e. evaluation of tenders, execution of work or final payment of the contract, the master copy available with the railway Administration shall be final and binding upon me/us.

4. I/we declare and certify that I/we have not made any misleading or false representation in the forms, statements and attachments in proof of the qualification requirements.

5. I/We also understand that my/our offer will be evaluated based on the documents/credentials submitted along with the offer and same shall be binding upon me/us.

6. I/We declare that the information and documents submitted along with the tender by me/us are correct and I/we are fully responsible for the correctness of the information and documents, submitted by us.

7. I/we understand that if the contents of the certificate submitted by us are found to be forged/false or incorrect at any time during process for evaluation of tenders, it shall lead to forfeiture of the Bid Security besides banning of business for a period of up to five year. Further, I/we (insert name of the tenderer) **..... and all my/our constituents understand that my/our offer shall be summarily rejected.

8. I/we also understand that if the contents of the certificate submitted by us are found to be false/forged or incorrect at any time after the award of the contract, it will lead to termination of the contract, along with forfeiture of Bid Security/Security Deposit and Performance guarantee besides any other action provided in the contract including banning of business for a period of up to five year.

Name and Signature of the Tenderer
with the Seal and Date

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA



**The contents in Italics are only for guidance purpose. Details as appropriate are to be filled in suitably by tenderer."*

(emphasis supplied)

20. Hence, it is the contention of the respondents that the petitioner having claimed an exemption under the tender as a Small Enterprise, has violated the undertaking given by it as to the truthfulness of the documents uploaded. In this regard, it is also pertinent to note that under the tender conditions, it is stipulated that if there is violation of clauses(1) to (4) of the tender conditions, the bid was entitled to be summarily rejected.

21. The petitioner relies upon Sections 2(b), Section 7 as well as Section 22 of the Act. The said provisions, read as under:

" 2. (b) When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when a accepted, becomes a promise;"

XXXXXXXXXX

"7. Acceptance must be absolute- *In order to convert a proposal into a promise the acceptance must -*

(1) be absolute and unqualified.

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner



CNR: KAHC010628952026

in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but; if he fails to do so, he accepts the acceptance."

XXXXXXXXXX

"22. Contract caused by mistake of one party as to matter of fact.- *A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact."*

22. It is the contention of the petitioner that the proposal having been accepted by the respondents, the said acceptance is absolute and the contract is not voidable since there was a mistake of fact. Hence, it is contended that the contract having been concluded, it was not open for the respondents to issue the impugned communication cancelling the Letter of Acceptance. The said contention put forth on behalf of the petitioner is unmerited.

23. In the facts of the present case, the petitioner having represented that it was entitled for an exemption as a Small Enterprise and having also claimed an exemption in the payment of the EMD, as well as other benefits, there is no material on record to indicate that after the factum of the



exemption not being valid as on the date of the opening of the tender came to the knowledge of the petitioner, the petitioner has withdrawn its request for claiming of the exemption. The respondent having issued the Letter of Acceptance on the erroneous representation of the petitioner that it was a Small Enterprise, was justified in issuing the impugned communication as the acceptance by the respondents was on an erroneous assumption as to the status of the petitioner. The acceptance of the respondents having been made on the erroneous representation of the petitioner, the contract was voidable at the option of the respondents. It is further *ex-facie* clear that the representation of the petitioner as to its status of being a Small Enterprise and the petitioner claiming benefits thereto, was in violation of the undertaking given by it while submitting the tender.

24. In view of the aforementioned, the respondents were justified in cancelling the Letter of Acceptance since the same was based on the misrepresentation of the petitioner. The continued insistence of the petitioner to claim the exemption as a Small Enterprise, would not tantamount to the same to be a



NC: 2026:KHC:53986
WP No. 28374 of 2026

mistake of fact as is sought to be contended on behalf of the petitioner.

25. In view of the aforementioned, the relief sought for by the petitioner does not merit consideration. Accordingly, the writ petition is dismissed as being devoid of merit.

Digitally Signed by CHEPPUDIRA
MONNAPPA POONACHA

(C.M. POONACHA)
JUDGE

ND
List No.: 1 Sl No.: 45