



2026:DHC:7127



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 20th August, 2026# **CNR No. DLHC010272632026**

CM APPL. 50660/2026

IN

+ W.P.(C) 8648/2026

M/S SPIKE ADVERTISING PVT LTD Petitioner

Through: Mr. Nitin Mittal, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Pratima N Lakra, CGSC with Ms.
Santha Smruthi and Mr. Shailendra
Kumar Mishra, Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present writ petition has been filed seeking the following reliefs:

- “A. Issue a writ of certiorari or mandamus or any other appropriate writ, order or direction quashing the notice of termination no. JAT-NRFZROCOML- Pub-2/2026 dated 26.05.2026 (Annexure P/1) communicated to the Petitioner only on 24th June, 2026 through whatsapp.*
- B. Direct the Respondent to pass a reasoned and speaking order on the representations of the Petitioner in accordance with law”*

2. The grievance of the petitioner is that the contract of the petitioner for commercial advertisement rights in respect of Vande Bharat Express, which was for a period of five (5) years w.e.f. 26th July, 2025 to 25th July, 2030, has been illegally and arbitrarily terminated by the respondents, *vide*



communication dated 26th May, 2026.

3. The brief facts necessary for deciding the present petition are set out below:

3.1 The respondents floated a tender by way of e-auction on 26th June, 2025 in respect of commercial advertisement through factory fitted LED TV screens in all coaches of Train No.26403/26404 Vande Bharat Express that was operating between Sri Mata Vaishno Devi Katra ('SVDK') - Srinagar.

3.2 The tender was awarded in favour of the petitioner and a contract was entered into on 26th June, 2025 between the petitioner and the respondents for a period of five (5) years w.e.f. 26th July, 2025 to 25th July, 2030 ('subject contract').

3.3 The petitioner made a security deposit of Rs.3,90,000/-. The petitioner also made payments towards license fee to the respondents.

3.4 The respondents increased the coaches in the subject train from 8 coaches to 20 coaches with 78 screens comprising of 4 screens in each coach. The originating station of the operational route was also changed from SVDK to Jammu Tawi.

3.5 The petitioner submitted a formal request *vide* letter dated 11th May, 2026, seeking permission to operate advertisements on the 20 coaches.

3.6 *Vide* letter dated 26th May, 2026, the respondents terminated the subject contract on the grounds of 'administrative reasons.' The relevant extracts from the said letter are set out below:

"The decision to terminate the contract has been taken due to administrative reasons and in accordance with the rights and provisions available to the competent authority under the terms and conditions of the agreement. This action is being taken in the interest of administrative requirements and operational considerations."



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You are hereby requested to discontinue all activities related to the said contract and make necessary arrangements for the withdrawal/removal of any equipment, materials, or advertising a content associated with the contract, if applicable. Any outstanding obligations arising up to the effective date of termination shall be settled in accordance with the terms of the agreement and applicable rules.

Please treat this communication as the official notice of termination and acknowledge receipt of the same.”

3.7 Subsequently, on 18th June, 2026, the respondents issued a fresh tender for commercial advertising rights in the subject train.

4. Aggrieved therefrom, the petitioner has filed the present writ petition.

5. While issuing notice in the writ petition on 3rd July, 2026, respondents were directed to pass a Speaking Order on the representation dated 23rd June, 2026 filed by the petitioner.

6. Pursuant to the said direction, a Speaking Order has been passed by the respondents on 16th July, 2026, wherein the respondents have rejected the representation of the petitioner.

7. Mr. Nitin Mittal, counsel appearing on behalf of the petitioner submits that the termination of the contract is completely unjust, unlawful and arbitrary. He has placed reliance on Clause 22 of the subject contract to contend that additional coaches should have been offered to the petitioners.

8. Mr. Mittal submits that even if there was an increase in the number of coaches or the route of the train was made longer, the contract of the petitioner should have been continued by payment of additional license fee. He further submits that the petitioner has spent a lot of money in making preparations for the contract on the basis that the contract would run for a period of 5 years. However, the same has been terminated in a premature manner.



9. Ms. Pratima N. Lakra, counsel appearing on behalf of the respondents, submits that the termination has been carried out in terms of the subject contract. She places reliance on Clauses 17.2 and 17.3 of the Special Conditions of Contract ('SCC') of Freight Marketing Circular ('FMC') No.11 of 2022. She submits that in the present case, there was a fundamental change in the situation, inasmuch as the coaches were increased from 8 to 20 and the route of the train was also made longer.

10. Ms. Lakra submits that since there was a fundamental change in circumstances, the respondents were well within their rights to terminate the contract and offer the same by way of a fresh tender. She further submits that the petitioner participated in the fresh tender, however the petitioner was not successful.

11. I have heard the counsel for the parties.

12. At the outset, a reference may be made to the Speaking Order dated 16th July, 2026 passed by the respondents pursuant to the order passed by this Court on 3rd July, 2026. The Speaking Order notes that the original asset that was tendered to the petitioner, ceased to exist in its original form and was replaced by a substantially different commercial asset having considerably higher advertising potential.

13. The Speaking Order also states that whenever the scope of a public contract undergoes a substantial and material alteration which significantly affects the commercial value of the contract, the enhanced rights should ordinarily be offered through a fresh competitive bidding process. In this regard, Speaking Order places reliance on Para 9(A)-3 of the SOP. The said paragraph from the SOP is set out below:



“3. In case an increase in quantity of an individual item by more than 25% of the agreement quantity is considered unavoidable, the same shall be got executed by floating a fresh tender. If floating a fresh tender for operating that item is considered not practicable, quantity of that item may be operated in excess of 125% of the agreement quantity (100% i.e., the original quantity +25% i.e., quantity over and above the original quantity) subject to the following conditions:”

[emphasis supplied]

14. The Speaking Order also states that the contract was terminated on administrative grounds as per exit Clause 17.2 of the SCC of FMC No.11 of 2022. The relevant extracts from the Speaking Order are set out below:

*“The Railway administration decided to terminate the existing contract as per exit clause 17.2 of SCC of FMC 11 of 2022 which states “Railway shall have the right to terminate the contract/ Agreement without any financial repercussion on either side for any reason whatsoever after serving one month’s notice to the contractor. **Railway shall also reserve the right to terminate the contract, with immediate effect, without any financial repercussions on either side in case of operational exigencies or in cases where the asset, for which the contract was awarded, is not available for commercial exploitation due to some other development or change in site or any other reason.** Full EMD or SD and lump-sum freight/ rent/ license fee paid by the contractor, shall be refunded to the contractor without any interest.” And hereby Invite a fresh e-Auction a decision taken in the larger public interest with the objective of protecting Railway revenue, ensuring optimum realization of the enhanced commercial potential of the asset, maintaining transparency and competitiveness in public procurement, providing equal opportunity to all eligible bidders, and avoiding any perception of preferential treatment or discrimination. The decision also ensures compliance with the established principles of fairness, financial prudence, and good governance while facilitating the uninterrupted continuation of advertisement services through a transparent and competitive bidding process.”*

[emphasis supplied]

15. Clause 17.2 of the SCC of FMC No.11 of 2022, which is quoted in the aforesaid extract, gives the right to respondents to terminate the contract on account of any subsequent developments, change in site or for any other



reason. Accordingly, the action taken by the respondents in terminating the subject contract clearly flows from the aforesaid Clause 17.2.

16. In the present case, the decision of the respondents to terminate the subject contract and invite a fresh tender was founded upon the substantial alteration in the commercial asset and the consequent enhancement in its commercial value. The Speaking Order records that the decision was taken to safeguard Railway revenue, ensure optimum realisation of the enhanced commercial potential of the asset and maintain transparency and competitiveness in public procurement. The speaking order duly notes that the EMD/security deposit shall be refunded to the petitioner in terms of the subject contract.

17. In my considered view, no malafide can be attributed to the aforesaid action taken by the respondents, which was taken in public interest, particularly with a view to ensuring that the enhanced commercial rights were offered through a transparent and competitive process.

18. The petitioner has placed reliance on Clause 22 of the subject contract to contend that the additional coaches ought to have been offered to the petitioner without any increase in the licence fee. The said Clause is set out below:

“22. The License fee shall remain fixed for the whole contract period as mentioned in Scope of Work irrespective of any increase or decrease in number of coaches during the contract period. In case of any decrease in number of coaches in any/all trains, no refund or adjustment in License fee shall be permitted. Similarly, in case additional coaches are attached in any/ all trains, the additional coaches shall be offered to the Licensee without any increase in license fee.”

[emphasis supplied]



19. In my opinion, what is envisaged under said clause is small increase in the number of coaches. However, in the present case, as noted in the Speaking Order, there was a substantial change in the value of the contract. The coach composition was increased from 8 coaches to 20 coaches and the operational route was also modified from SVDK-Srinagar to Jammu Tawi-Srinagar. The Speaking Order notes that the aforesaid changes resulted in 150% variation in the commercial value of advertisement rights. Thus, in my view the said Clause will not apply in these circumstances.

20. It is settled law that the Court ought not to interfere in matters relating to government contracts in exercise of its writ jurisdiction, particularly where the decision of the authority has been taken bona fide and in public interest, unless the same is shown to be arbitrary, irrational, mala fide or actuated by bias.

21. Counsel for the respondent has placed reliance on the judgment of the Supreme Court in **Jagdish Mandal v. State of Orissa & Ors**¹, wherein the Supreme Court, while considering the scope of judicial review in matters relating to government contracts, held that where the decision of the authority is bona fide and taken in public interest, the Court ought not to interfere in exercise of its writ jurisdiction merely because another view may be possible. The relevant observations are set out below:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is

¹ (2007) 14 SCC 517



*a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. **If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.***

Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.

Cases involving black-listing or imposition of penal consequences on a tendered/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

[emphasis supplied]

22. The judgement in ***Jagdish Mandal*** (supra) was followed by the Supreme Court in ***Silppi Constructions & Contractors v. Union of India***², wherein the Supreme Court reiterated that courts must exercise great

² (2020) 16 SCC 489



restraint and caution in judicial review of contractual and commercial matters and should interfere only where arbitrariness, mala fides, bias or irrationality is established.

23. The petitioner has placed reliance on judgement of Supreme Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer & Ors.***³, wherein the Supreme Court quashed the notice of cancellation of the tender. However, in the said case, the tender was not terminated pursuant to any terms of the contract subsisting between the parties. The respondent therein cancelled the tender stating that there was technical fault in the tender that was floated. The relevant extracts from the said judgement are set out below:

“62. Now coming to the facts of the case at hand, the appellant has challenged the cancellation of the tender at the instance of the respondent on the ground of being manifestly arbitrary and influenced by extraneous considerations. It is evident from the notice of cancellation dated 07.02.2023, that the tender was not terminated pursuant to any terms of the contract subsisting between the parties, rather, the respondent ‘cancelled’ the tender saying that there was technical fault in the tender that was floated.

63. Thus, the respondent could be said to have exercised powers in its executive capacity as the action to cancel the tender falls outside the purview of the terms of the contract. Hence, it cannot be said that the present matter is purely a contractual dispute. It is also not a breach of contract, as no such breach has been imputed to the appellant in terms of the contract, but rather a plain and simple exercise of the executive powers.”

24. In the present case, as noted above, the termination of the subject contract was in terms of Clause 17.2 of the SCC of FMC No.11 of 2022.

25. Applying the aforesaid principles to the facts of the present case, I am of the view that the decision of the respondents to terminate the subject

³ (2024) 15 SCC 461



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contract and invite a fresh tender, having been taken in public interest and in view of the substantial enhancement in the commercial value of the asset, does not warrant any interference by this Court under Article 226 of the Constitution of India.

26. In view thereof, the present writ petition is dismissed. A direction is issued to the respondents to forthwith return the security deposit and any excess license fee paid by the petitioner.

27. Insofar as the damages for loss suffered by the petitioner on account of premature termination of the contract, it would be open to the petitioner to take appropriate remedies in law for recovering the same.

28. It is made clear that the observations made herein will not come in the way of the petitioner invoking appropriate remedies for recovery of damages.

29. The pending application stands disposed of.

30. The date of 8th September, 2026 stands cancelled.

AMIT BANSAL, J

AUGUST 20, 2026

Vivek/-