

Sr. No.116+117

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-COM No. 4 of 2017

Date of decision:24.01.2017

M/s Wipro Limited

.....Petitioner

versus

Excise and Taxation Technical Services Agency(ETTSA) and others

.....Respondents

CWP-COM No. 11 of 2017

M/s Wipro Limited

.....Petitioner

versus

Excise and Taxation Technical Services Agency(ETTSA) and another

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Anand Chibbar, Sr. Advocate with
Mr. Rohit Khanna, Advocate and
Mr. Raghav Kapoor, Advocate
for the petitioner.

Mr. K.V.Singh, Advocate and
Mr. Sagar Deswal, Advocate
for the Caveator/respondents.

Rakesh Kumar Jain, J.(Oral)

This order shall dispose of two petitions bearing CWP-COM No.4 of 2017(Ist Petition) which was filed to challenge the notice dated 26.10.2016(Annexure P-1) issued by the Excise and Taxation Technical Services Agency(ETTSA) partially rescinding the agreement dated 16.02.2011 and also for issuance of a writ in the nature of mandamus in order to direct respondents No. 1 and 2 to restore the GST Migration and accord necessary approvals to the petitioner for expeditious execution of the same and further an order directing the respondents not to take any coercive

steps against the petitioner in terms of notice dated 26.10.2016(Annexure P-1) and CWP-COM No.11 of 2017(IIInd petition) in which the petitioner has challenged the notice/termination order dated 11.01.2017 issued by respondent No. 1(ETTSA) and made the same prayers for issuance of writ in the nature of mandamus as were made in the Ist petition.

The Ist petition came up for hearing on 13.01.2017. It was adjourned on the request of counsel for the petitioner to 23.01.2017 because by that time respondent No. 1 had already passed the order on 11.01.2017 which the petitioner wanted to challenge in the subsequent writ petition and also the proceedings initiated at the instance of respondent No. 1 for invoking the performance bank guarantee at Bangluru on 12.01.2017.

The brief facts of the case, given to me during the course of hearing are that Master Services Agreement(MSA) was entered between the parties namely ETTSA and Wipro Ltd.(petitioner) on 16.02.2011. According to the agreement, the commencement and duration of the agreement was to come into effect w.e.f 16th Feb, 2011 and was to continue till the completion of five years from the date of state wide roll out of the project.

The Ist petition had to be filed by the petitioner when the agreement was rescinded by respondent No. 1 on 26.10.2016 when it was found by respondent No. 1 that despite expiry of three months from the date of review meeting held on 3.08.2016, the petitioner did not change its position regarding the work pertaining to GST which was imperative for the respondent to make functional before 1.04.2017 when GST was to be rolled out. In this back ground, respondent No. 1 while rescinding the work pertaining to GST observed that “*ETTSA cannot continue to wait for*

WIPRO to take up the GST work and is constrained to hereby partially rescind the MSA to the extent to the work pertaining to GST. The said work shall be awarded by ETTSA to a third party at the risk and cost of WIPRO. The risk and cost amount will be intimated to you in due course.”

Aggrieved against the decision taken for partial rescinding the MSA, the petitioner sent a letter dated 9.11.2016 to respondent No. 1 and the Chairman of Wipro also wrote a letter on 24.12.2016 to the Deputy Chief Minister Punjab. However, respondent No. 1 passed the impugned order/notice on 11.01.2017 in terms of clause 1.7 of the MSA terminating the contract by giving reasons best known to them.

Counsel for the petitioner has referred to various clauses of the agreement of MSA in order to challenge the impugned notice dated 26.10.2016 and order dated 11.01.2017, contending that the rights and interest of the petitioner have been adversely effected because of non-observance of principle of natural justice by the respondents i.e. audi alteram partem. It is submitted that the terms of the agreement itself provides a show cause notice before any adverse decision is taken by respondent No. 1 which is conspicuous by its absence in the proceedings. It is also submitted that the MSA also provides an opportunity of curing and had an opportunity been given before completion of the agreement, the petitioner would have cured the defect, if any, though it is submitted that there is no such defect at the end of the petitioner. It is further submitted that the petitioner had allegedly concluding the contract and the respondents are barred by the principle of Promissory Estoppel in this regard. It is further submitted that during the period of six years, from the date of execution of MSA, the petitioner has spent about ₹200 crores but respondent No. 1 has not paid any

single penny so far. Rather, as soon as the order dated 11.01.2017 was passed, the respondent immediately got the non-performance guarantee encashed at Bangluru. Learned counsel for the petitioner has been candid enough in referring to the provision of alternative dispute mechanism provided in clause 9 much less 9.1. It is submitted that though the arbitration clause is there for the parties to address their grievances for the purpose of compensation but the petitioner is aggrieved of the action of the respondent firstly, in partially rescinding the agreement MSA and finally terminating the same without a show cause. He has referred to two decisions of the Supreme Court i.e. *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others 1999(1) RCR(Civil) 220* and *HarbanslalSahnia vs. Union of India AIR 2003SC2120* to contend that the high court has the jurisdiction and power to issue a writ while exercising its power under Article 226 of the Constitution of India if the writ petitioner is seeking enforcement of any fundamental right or where there is failure of principle of natural justice and where the order or proceedings are wholly without jurisdiction or the vires of the Act is challenged. Learned counsel has further very fairly submitted that the petitioner is resting its case upon the first and second principle and there is no challenge to the vires of the Act.

On the other hand, counsel for respondent No. 1 has submitted that the petitioners are at fault in violating the terms of MSA because it is provided in clause 2 of the agreement that the effective date of the MSA would be 16.02.2011 which shall continue till completion of five years from the date of state wide roll out of the contract but the petitioner has not rolled out the project state wide and even the system requirement study is not complete. However, it is not denied that some modules are working in the

District Patiala. Counsel for the respondent has vehemently opposed the writ petition on the ground of availability of alternate remedy of arbitration in the contract itself and submitted that both the parties are referring to various clauses of the agreement in their favour which is to be ultimately decided by the arbitrator. It is also submitted that the issuance of a show cause is not a part of clause 1.7 which has been invoked by the petitioner, therefore, the petitioner cannot urge that the principle of natural justice have not been followed. He has supported his arguments while referring to two decisions of the Supreme Court rendered in the case of *Pimpri Chinchwad Municipal Corporation and others vs. Gayatri Construction Company and another MANU/SC/7917/2008* and *State of U.P. and others vs. Bridge & Roof Company(India) Ltd. (1996) 6 SCC* to contend that interpretation and implementation of a clause cannot be the subject matter of the writ petition and if the parties are governed by the contract then writ petition is not maintainable.

I have heard both the learned counsel for the parties and after examining the available record with their able assistance, am of the considered opinion that the issue in this case is pertaining to the interpretation of various clauses of the agreement. Both the parties are relying upon one clause or the other of the MSA in their favour for which the appropriate remedy before the petitioner is to invoke the provisions of clause 9.1 of the MSA for arbitration. Thus, in view of the aforesaid, I do not find any reason to interfere in this petition in the presence of an alternate effective dispute redressal mechanism adopted by both the parties at the time of signing MSA. Hence the present petitions are hereby dismissed. It is needless to say that in view of the fact that the petitioner has an alternative

remedy in view of clause 9.1, they are at liberty to avail the same in
accordance with law.

24th January, 2017

Shivani Kaushik

[Rakesh Kumar Jain]
Judge

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No