

15.09.2020.
Item No. 18

M.A.T. 539 of 2020
with
I.A. No. C.A.N 1 of 2020
(Old No. C.A.N. 5940 of 2020)
with
I.A. No. C.A.N 2 of 2020
(Old No. C.A.N. 5942 of 2020)

Mr. Suraj Prakash Pandey
Vs.
The General Manager,
South Eastern Railway and others.

(Via Video Conference)

Mr. Rohit Das,
Mr. Aniruddha Bhattacharya.
... for the appellant.

Mr. Naba Kumar Das.
... for the respondent nos. 1 and 2.

This mandamus appeal arises out of an order and judgment dated 19th August 2020 passed in WP 6369 (W) of 2020 whereby and whereunder the writ petition was dismissed on the ground of alternative remedy.

Indubitably, the appellant was awarded a work contract by the Government of India, Ministry of Railways and it stipulates the furnishing of the performance guarantee as well as the additional guarantee within the stipulated time. Subsequently, the performance was abridged because of the pandemic and the declaration of lockdown. Subsequently, by an Office Memorandum dated 13th May 2020 issued by the Government of India, Ministry of Finance, Department of Expenditure

Procurement Policy Division, the performance of obligation was extended between three months to six months depending upon the specific circumstances. The aforesaid Office Memorandum was issued having realized “Force Majeure” because of an unforeseen pandemic struck globally.

The grievance of the appellant is that despite such Office Memorandum by which the time for performance of an obligation under the contract was extended yet the respondent authorities proceeded to terminate the contract whimsically, arbitrarily, illegally and in clear breach of terms and conditions embodied in the said contract.

The writ petition was moved challenging such action of the respondent authorities and, as indicated above, the Single Bench dismissed the same as the standard terms and conditions applicable to the parties contains an arbitration clause.

Learned Advocate for the appellant submits that the said Office Memorandum issued subsequently automatically extended the period in any Government contract and if any violation is made or the respondent authorities acting in breach thereof, it is an independent cause of action not relatable to the contract containing an arbitration clause.

We have perused the standard terms and conditions as well as the Office Memorandum dated 13th May 2020. The aforesaid Office Memorandum simply extended the time reserved in the Government contract without effecting and/or altering the other terms and conditions incorporated therein. The termination of a contract is within the realm of the party and can be exercised invoking the clause containing such power of termination.

The question hinges on the action of the respondent authorities in terminating the contract

and, therefore, such action springs from the contract itself and, therefore, in our view, the arbitration clause is attracted.

Though we are not unmindful of the settled proposition of law that alternative remedy is not an absolute bar in entertaining an application under Article 226 of the Constitution of India, yet we cannot overlook the fact that the courts have imposed self-restraint in entertaining the writ petition when an alternative remedy, which is efficacious and effective, is available to the parties. It is merely a rule of discretion than of exclusion.

We do not feel that it is a fit case where the High Court should exercise such discretion when the proper remedy is available to the appellant under the contract, more particularly, in the form of alternative proceeding.

We, thus, do not find any infirmity in the order and judgment of the Single Bench. The appeal and the connected applications are dismissed.

However, dismissal of the writ petition as well as the appeal shall not stand in the way of the appellant in exhausting the remedy available to him under the law.

There shall, however, be no order as to costs.