

9th June, 2022
(D/L No.53)
(SKB)

W.P.A. 8936 of 2022

M/s. Niranjana Enterprises
Versus
Union of India and others

Mr. Sakya Sen,
Mr. Moti Sgar Tiwari
... for the petitioner.

Ms. Aparna Banerjee
... for the respondents.

The petitioner prays for a restraint on the respondent Railways from giving effect to a letter dated 4th May, 2022 and from terminating the agreement dated 24th March, 2021.

Learned counsel appearing for the petitioner submits that the petitioner received the Termination Notice dated 9th May, 2022 on 21st May, 2022. The delivery endorsements shows this fact. Counsel places several documents to show that the Railways waived an initial notice by which the petitioner was given 7 days time to complete the works contract. It is also submitted that the Railways issued a copy of the termination notice to the concerned bank while the petitioner remained completely unaware of the fact of termination.

Learned counsel appearing for the Railways submits that the General Conditions of Contract of Railways contains an arbitration clause by reason of

which the petitioner is at liberty to address its grievance before a consensual forum.

It appears from the documents on record that the Railways issued the termination notice on 9th May, 2022 with a copy to the Bank for invoking the bank guarantee furnished by the petitioner. The termination notice was served on the petitioner on 21st May, 2022. Significantly on the very same day of the termination i.e. 9th May, 2022, the Railways issued a revised chart for completing the work which the petitioner was due to undertake. The documents on record further show that the Railways, by its very acts, have waived earlier notices issued to the petitioner, particularly, a notice dated 4th May, 2022 which was treated as a notice under Clause 62 of the General Conditions of Contract. The Railways were thus under an obligation to issue a fresh notice under Clause 62 before terminating the contract with the petitioner. The railways however terminated the contract without giving a fresh 48 hours notice and that too on very day of revising the work schedule of the petitioner.

The defence taken by the Railways of an Arbitration Clause in the Standard General Conditions of Contract, is not tenable in view of the decisions of the Supreme Court including *Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.* reported in (2003)2 SCC 107 and

affirmed in *Union of India and others Vs. Tania Constructions Private Limited* reported in (2011)5 SCC 697. The principles of *Whirlpool Corporation Vs. Registrar of Trade Marks* reported in (1998)8 SCC 1 were relied on in both the aforesaid decisions.

In view of the above reasons, the impugned notices issued by the Railways cannot be sustained.

W.P.A.8936 of 2022 is allowed and disposed of with a direction on the Railways not to give any effect of the notices dated 4th May, 2022, 9th May, 2022 and 10th May, 2022.

Since affidavits have not been called for, allegations made in the writ petition are deemed not to have been admitted.

(Moushumi Bhattacharya, J.)