

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 17690 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Jayshree Enterprises,
represented through its
Proprietor-Prabhat Kumar
Biswal, Sambalpur

.....

Petitioner

-Versus-

Food Corporation of India,
Bhubaneswar and Ors.

.....

Opp. Parties

For Petitioner

: M/s. Pami Rath, J. Mohanty,
B. Mohanty, S. Guman Singh
& S. Nayak, Advocates

For Opp. Parties :

M/s. Debasis Nayak-A, S. P.
Swain & Debasmita Nayak,
Advocates
[O.Ps.No.2-3]

M/s. Majoj Kumar Pati,
Central Government Counsel
[O.P. No. 4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE S. K. MISHRA**

DECIDED ON : 18.07.2022

DR. B.R. SARANGI, J. The Petitioner, which is a Proprietorship Firm and was engaged in transportation of food grains, has filed this Writ Petition, represented through its Proprietor-Prabhat Kumar Biswal, seeking to quash the letter dated 27.09.2016, under Annexure-8, issued by Opposite Party No.1 terminating the contract and forfeiting the Security Deposit including Bank Guarantee of the Petitioner Firm lying with the Food Corporation of India (FCI) against the contract and getting the work done for the unexpired period of the contract at his risk and cost, on account of breach of contract.

2. The factual matrix of the case, in brief, is that the Food Corporation of India (FCI), a Public Sector Undertaking of Govt. of India, was set up under the Food Corporations Act, 1964, in order to fulfill the objectives of the Food Policy. Opposite Party No.1-FCI issued a Notice on 10.03.2015 inviting tenders through online in respect of handling of food grains at Railhead, Hirakud and transportation to Food Storage Depot (FSD), Hirakud, and vice-versa for a period of two years.

Abide by the terms and conditions of the tender prescribed in the Notice Inviting Tender (NIT), the Petitioner submitted his tender and being the lowest bidder, he was awarded with the work. On being called upon, the Petitioner deposited a sum of Rs.5,75,000/- towards 50% of the Security deposit, as rest 50% was to be deducted from the admitted bills of the Petitioner. The Petitioner, as per the terms and conditions of the NIT, also furnished a Bank Guarantee of Rs.23,00,000/- bearing No.0972415-BG0000138 dated 29.05.2015 issued by SBI, SME Branch, Sambalpur, forming 10% of the contract value of Rs.2,30,00,000/-, which was to remain in force and effective up to 28.11.2017. After work was awarded, the Petitioner started execution of the same by transporting food grains, by engaging trucks of various truck owners of Sambalpur Truck Owners Association, from the FSD of the FCI, at Hirakud, to Railhead, Hirakud, and vice-versa. The distance from FSD, Hirakud to Railhead, Hirakud, is about 11 Kms. The food grains were being loaded on the trucks supplied by the Petitioner by labourers of the FCI

at the Depot and the food grains were unloaded at the Railhead, Hirakud, by the labourers engaged by Opposite Party No.1. After loading of the food grains, the said trucks were duly sealed by the FCI personnel and in course of transportation from Depot to Railhead, 10 vehicles were used to ply at a time, and there used to be two personnel of the FCI, one at the front end and the other at the rear end of the convoy.

2.1 On 06.06.2016, a written complaint was lodged by the ASI of Police, Khetrajpur, Sambalpur, alleging therein that on 31.05.2016, while performing patrolling duty, 30 bags weighing 50 Kgs., each lying near Biraja Temple, Laxmidunguri were found. On enquiry by the local police, it was found that the said rice packets were deposited at FSD, Hirakud, and on intimation by the FCI Manager it came to light that the said rice packets were destined to Dumka/Jasidih, Jharkhand, being transported by the Petitioner on 31.05.2016 by Rice Rake being loaded at Railway siding. Basing on the said written complaint, FIR was drawn against the Petitioner U/s 407 IPC for alleged

commission of criminal breach of trust, pursuant to which, the Petitioner approached this Court by filing ABLAPL No.11302 of 2016 and this Court, vide Order dated 31.08.2016, allowed the Petitioner on bail. Thereafter, the Petitioner approached this Court by filing CRLMC No.2688 of 2016 U/s 482 of the Cr.P.C. for quashing of the criminal proceeding, which is pending for consideration.

2.2 Opposite Party No.5-Superintendent of Police, Sambalpur, intimated and requested Opposite Party No.2 to cancel the license of the Petitioner. Opposite Party No.2, vide letter dated 22.07.2016, unilaterally intimated the Petitioner regarding recovery of the cost of 30 bags of rice from his bills and further gave a warning that no such incident should occur in future during Handling and Transportation of stock handed to him. The Petitioner refuted the allegations levelled against him regarding shortage of any rice bags by him during transportation and requested Opposite Party No. 3 to refund the cost recovered from his bills. After recovering the cost of 30 bags of rice from the bills of the Petitioner,

Opposite Party No.1-FCI again, vide letter dated 27.07.2016, asked the Petitioner to show-cause within 10 days as to why Opposite Party No.1 shall not have, without prejudice to other rights and remedies, the right, in the event of breach of Contractor of any of the terms and conditions of the contract, to terminate the contract forthwith and to get the work done for the unexpired period of the contract at the risk and cost of the Contractor and/or forfeit the security deposit or any part thereof for the sum or sums due for any damages, losses, charges, expenses or costs that may be suffered or incurred by the Corporation due to the Contractor's negligence or unworkman-like performance of any services under the contract. In response to the same, the Petitioner filed reply on 08.08.2016 refuting all the allegations levelled against him by Opposite Party No.1 and contended that there was no shortage of any rice bags by him, as alleged. He categorically stated that he had duly unloaded all the bags transported by him at the Railhead, Hirakud. Opposite Party No.1-FCI, instead of taking any decision on his prayer, terminated his

contract, vide letter dated 27.09.2016, and further imposed penal action upon him by forfeiting the Security Deposit, including Bank Guarantee, lying with the FCI against the contract and getting the work done for the unexpired period of contract at his risk and cost. Hence, this Writ Petition.

3. Mrs. Pami Rath, learned Counsel appearing for the Petitioner, vehemently contended that on 31.05.2016, the Petitioner transported 7447 bags of rice from FSD, Hirakud to Railhead, Hirakud, which was destined for FCI, Jasidih, and further transported 7446 bags of rice from FSD, Hirakud to Railhead, Hirakud, which was destined for FCI, Dumka. So, the Petitioner transported 14,893 bags of rice in total on 31.05.2016. These bags of rice were transported by 41 vehicles supplied by the Petitioner, being loaded by the labourers of FCI, and after loading of these vehicles, loading slips were duly supplied by the Depot Manager to each Driver of the respective vehicle. It is contended that after loading of these vehicles, work-slips were being issued twice to the Petitioner-Contractor during course of

transportation. The first work-slip was being issued to the Petitioner after loading of the vehicles at the FSD and the second work-slip was issued to the Petitioner after unloading of the rice bags at the Railhead, Hirakud. These documents clearly demonstrate that the Petitioner had received 14,893 bags of rice on 31.05.2016 at FSD, Hirakud, and duly unloaded 14,893 bags of rice at Railhead, Hirakud. It is also contended that the Petitioner had gained experience of 16 years and, as such, he was doing the said work with utmost care and caution. Therefore, the termination of the agreement of the Petitioner cannot be sustained in the eye of law. It is further contended that the notice of show-cause issued to the Petitioner on 27.07.2016 only reflects violation of Clause-XX(1) and Clause-XX(27) of MTF. The Petitioner submitted his reply vide Annexure-7, dated 08.08.2016, taking a specific stand that number of bags received from FSD, Hirakud, on 31.05.2016 were transported to Railhead and loaded into the Wagon under the supervision of Railhead FCI Officers and staff. Accordingly, RRs were prepared by

them and to that effect, work-slips were issued. In addition to that the numbers of bags dispatched were also received at the destination without any full bag shortage. It is contended that while passing the Order impugned dated 27.09.2016, under Annexure-8, objection so raised by the Petitioner was not considered in proper perspective. It is contended that it has only recorded the factual matrix, but without assigning any reason and without coming to independent reason, the Authority has terminated the contract, which cannot be sustained in the eye of law. It is further contended that in the said Order/Letter dated 27.09.2016, it is mentioned that a Committee was constituted to investigate into the matter and the said Committee in its report concluded that the bags seized by the police personnel were issued out from FSD, Hirakud, and handed over to the Petitioner being the H&T Contractor of FSD, Hirakud, (Ex-RH, Hirakud) for rake loading operation. The said Committee had never called upon the Petitioner to participate in the inquiry process and it is stated that merely handing over the same to the

Petitioner cannot suffice the purpose, as the Committee had not given any opportunity of hearing to the Petitioner. It is also further stated in the said Letter/Order that a Regional Level Committee was also constituted to examine the contentions and the grounds taken by the Petitioner in its Reply dated 08.08.2016 and even the Second Committee did not give any opportunity of hearing to the Petitioner. Thereby, there is gross violation of the Principle of Natural Justice. More so, due to arbitrary and unreasonable action of the Authority, the Order terminating the Contract of the Petitioner has been passed, which cannot be sustained in the eye of law.

To substantiate her contentions, she has relied upon ***ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.***, (2004) 3 SCC 553; ***Popcorn Entertainment v. City Industrial Development Corpn.***, (2007) 9 SCC 593; ***Harshit Agarwal v. Union of India***, (2021) 2 SCC 710; ***United Bank of India v. Biswanath Bhattacharjee*** (Civil Appeal No.8258 of 2009 disposed of on 31.01.2022);

M/s.Bombay Oil Industries Pvt. Ltd. v. Union of India, (1984) 1 SCC 141; ***Allied Motors Ltd. v. Bharat Petroleum Corporation Limited***, (2012) 2 SCC 1; ***Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati***, (2015) 8 SCC 519 and ***Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi***, (1978) 1 SCC 405.

4. Mr. D. Nayak-A, learned Counsel appearing for Opposite Parties No.2 & 3, vehemently contended that since alternative remedy is available as per the Agreement, the Petitioner, instead of approaching the appropriate forum, has approached this Court invoking jurisdiction under Article-226 of Constitution of India, which is not maintainable. Therefore, the Writ Petition should be dismissed. It is further contended that pursuant to the FIR lodged, though investigation has been completed and charge-sheet has been submitted, but trial has not yet commenced. Therefore, the Petitioner's involvement for shortage of 30 bags of rice can be well inferred from the charge-sheet itself. Thereby, the Authorities have not committed any error

by taking steps for cancellation of contract of the Petitioner so as to warrant interference of this Court at this stage. It is further contended that the order of termination of contract has been passed by the FCI as per terms and conditions of the Agreement. It is also contended that the Petitioner has failed to deliver the actual rice bags at Railhead, Hirakud, and therefore, 30 bags of rice were seized by the Police. The shortage of 30 bags during rake loading operation is genuine as was revealed during investigation by the FCI Committee constituted for the purpose. Therefore, it is contended that action taken for termination of Agreement is well within the domain of the Authority. It is further contended that it was not possible to count bags at Railhead, Hirakud, because there was no space at Railhead, Hirakud. Hence, the trucks were directly unloaded into the wagons, which made it very difficult for the FCI Officials at Railhead, Hirakud, to count all bags during the unloading process which could exceed 50,000 in number in one goods train. In view of such position, it is contended that the action taken by the

Authority is well justified and therefore, prayed for dismissal of the Writ Petition.

5. Opposite Party No.4 filed Counter Affidavit stating that the Petitioner had approached the Railway Authority (APIO) under Right to Information Act, 2005 (for short "RTI, Act, 2005"), vide application dated 20.09.2016, seeking information towards copy of Railway Receipts dated 31.05.2016 issued by the Station Manager/Hirakud and forwarding letters submitted by FCI/Hirakud to Station Manager regarding outward rake loading of Rice from Ex-Hirakud to Dumka and JSME. Accordingly, the copy of Railway Receipts No.212000585 and 2122000586 and forwarding Notes were furnished to the Petitioner, vide APIO's Letter No.C/SBP/RTI-Act/PKB/84/2016 dated 22.09.2016, under Annexure-11 Series.

6. Opposite Party No.6 filed his Counter Affidavit stating that during investigation, it was evident that the seized rice bags were transported from FSD, Hirakud, by the Petitioner, as he was entrusted with transportation

of rice, but he had misappropriated 30 bags of rice during transportation. Therefore, the Authority has passed the order dated 27.09.2016 terminating the Agreement of the Petitioner and this action has been taken against the Petitioner as a warning not to repeat the same once again.

7. This Court heard Mrs. Pami Rath, learned Counsel for the Petitioner and Mr. D. Nayak-A, learned Counsel appearing for Opposite Parties No.2 & 3 and Mr. M.K. Pati, learned Central Government Counsel appearing for Opposite Party No.4, in virtual mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the Writ Petition is being disposed of finally at the stage of admission.

8. The undisputed facts, as emerged from the record, are that the Petitioner was engaged by Opposite Party No.1-FCI as a Transport and Handling Contractor for transportation of food grains. On 31.05.2016, he had transported 14893 bags of rice from FSD, Hirakud, to Railhead, Hirakud, by engaging trucks of various truck

Owners of Sambalpur Truck Owners Association by the laboureres of FCI at the Depot. But 30 bags of rice were found missing, basing upon which an FIR was lodged. As a consequence thereof, the Petitioner approached this Court by filing Anticipatory Bail Application bearing ABAPL No.11302 of 2016 and he was granted bail. Thereafter, he filed CRLMC No.2688 of 2016 under Section 482 Cr.P.C. for quashing the proceeding, which is pending. On completion of investigation, charge-sheet has been submitted and the said case is waiting for trial. Under such circumstances, can such shortage of 30 bags of rice be attributable to the Petitioner?

9. May it be noted that at no point of time, while transportation of rice bags was going on by the Petitioner, Opposite Party No.1 had never pointed out about shortage of 30 bags of rice. This shortage of 30 bags of rice was only brought to the notice by the Police on the basis of FIR lodged. There is no doubt, as per the terms of the contract, it was the responsibility of Opposite Party No.1 to count the bags meant for loading and dispatching at the Railhead. If at all any shortage

was there, that may be due to irresponsible act of the Officers of Opposite Party No.1-FCI and to cover up their own lacuna, liability cannot be fastened on the Petitioner.

10. In addition to the above, it appears that a Committee was constituted to investigate into the matter, which furnished its Report concluding that 30 bags seized by the Police personnel were issued from FSD, Hirakud, and handed over to the Petitioner, being the H&T Contractor of FSD, Hirakud, for rake loading operation. But fact remains, neither the Petitioner was ever called upon to depose before the Committee nor what type of investigation was conducted by such Committee, was known to the Petitioner. More so, reliance was placed on the Report of such Committee, but copy of such Report was not served on the Petitioner. Thereby, the Opposite Parties have acted arbitrarily and unreasonably, which is contrary to the provisions of law and violates the Principles of Natural Justice.

11. Even subsequently a Regional Committee was also constituted to examine the contentions and the grounds taken by the Petitioner in his Reply dated 08.08.2016 and submit its Report and such Committee had never noticed to the Petitioner nor given any opportunity of hearing to him nor has he been brought to the scope of investigation at any point of time. Rather, the said Committee furnished its Report behind the back of the Petitioner, which is violative of the Principle of Natural Justice. Both the Committees, which were constituted by the Opposite Parties, having proceeded without giving opportunity of hearing to the Petitioner at any point of time, on the basis of the Reports of the said Committees, the action taken by the Opposite Parties violates the Principles of Natural Justice.

12. In **ABL International Ltd.** (supra), the apex Court held that in an appropriate case, a Writ Petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. Merely because some disputed questions of fact arose, the same cannot be a ground to refuse to entertain a

Writ Petition in all cases as a matter of rule. A Writ Petition involving a consequential relief of monetary claim is also maintainable.

13. In **Popcorn Entertainment** (supra), the apex Court, referring to **Whirlpool Corpn. V. Registrar of Trade Mark**, (1998) 8 SCC 1, held that there are three clear-cut circumstances wherein a Writ Petition would be maintainable even in a contractual matter; firstly, if the action of the Respondent is illegal and without jurisdiction; secondly, if the Principles of Natural Justice have been violated; and thirdly, if the Appellants' fundamental rights have been violated. The present case falls in the second category where the Principles of Natural Justice have been violated. Therefore, the Writ Petition is maintainable.

14. On the basis of the factual matrix, as discussed above, it is made clear that the Authorities have acted arbitrarily and exercised unfettered discretion and such discretion exercised by the decision maker is subject to judicial scrutiny, if a purpose other

than a specified purpose is pursued. Therefore, if the Authorities pursued unauthorized purposes their decision is illegal. Therefore, if irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated.

15. In **Harshit Agarwal** (supra), the apex Court has laid down law to the effect that if irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law. Reference was made to **R. v. Vestry of St. Pancras**, (1890) LR 24 QBD 371 (CA), in which it was held that "... If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

16. In the touchstone of the above principles of law if the present case is examined, here the Authorities

constituted two Committees, one for conducting investigation into the matter and the other one, which was a Regional Level Committee, was to examine the contentions and grounds taken by the Petitioner. Both the Committees did not give opportunity of hearing to the Petitioner and the Reports furnished by them were also not shown to the Petitioner. Thereby, on the basis of the Reports given by the Committees, the contract of the Petitioner was terminated. But fact remains, whatever bags of rice were allowed to be transported, having been received at the Railhead, no responsibility can be attributable to the Petitioner for shortage of any bags to take a drastic step like cancellation of contract. Thereby, relevant considerations have been ignored and the responsibility of the Authorities has been shifted to the Petitioner which is not permissible.

17. On perusal of the impugned order dated 27.09.2016, at Annexure-8, it would be seen that no independent findings for such cancellation of agreement have been given. Rather, only reliance has been placed on two Reports of the Committees, which were

submitted without giving opportunity of hearing to the Petitioner and providing copies thereof to the Petitioner. As such, the Authorities have not arrived at their independent conclusion by assigning any reason and passed the Order stating that in terms of provisions contained in Clause-XI (b) of the MTF and on account of breach of contract, the H&T contract of the Petitioner was terminated by forfeiting the Security Deposit, including Bank Guarantee, lying with FCI against his contract and getting the work done for the unexpired period of the contract at his risk and cost.

18. In the Counter Affidavit filed on behalf of the Opposite Parties explanation has been given. But the subsequent explanation cannot be taken into consideration, in view of the judgment of the apex Court in ***Mahender Singh Gill*** (supra), wherein reference was made to the case of ***Commissioner of Police, Bombay v. Gordhandas Bhanji***, AIR 1952 SC 16, in which it was specifically held as follows:-

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what

he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Therefore, the reasons which have been supplied by way of filling Counter Affidavit, cannot be accepted and the same is hereby rejected, in view of the ratio decided by the apex Court in **Union of India v. Mohan Lal Capoor**, (1973) 2 SCC 836, that reasons being a necessary concomitant to passing an order, the Authority can thus discharge its duty in a meaningful manner by furnishing the same expressly. Similar view has also been taken in **Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India**, (1976) 2 SCC 981.

19. In **Uma Charan v. State of Madhya Pradesh**, (1981) 4 SCC 102, the apex Court held as follows:-

".....We must, however, impress upon the Government that while disposing of applications under Sections 21, 22 and 23 of the Monopolies and Restrictive Trade Practices Act, 1969 it must give good reasons in support of its order and not merely state its bald conclusion. The faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders. The relevant material must be made available to the objectors because, without it, they cannot possibly meet the claim or contentions of

*the applicants under Sections 21, 22, and 23 of the MRTPA Act. The refusal of the Government to furnish such material to the objectors can amount to a denial of a reasonable opportunity to the objectors to meet the applicant's case. And denial of a reasonable opportunity to meet the other man's case is denial of natural justice." Similar view has also been taken by the apex Court in **M/s. Bombay Oil Industries Pvt. Ltd** (Supra).*

20. In **United Bank of India** (supra), the apex Court in Paragraph-19 of the Judgment held to the following effect:-

"The bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under Article 226 of the Constitution. Yet, from H.C. Goel onwards, this Court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 of the Constitution are available, and intervention, warranted."

21. In **Allied Motors Limited** (supra), the apex Court, taking into consideration long years of service rendered by the Petitioner therein, held in Paragraph-59 of the judgment as follows:-

"In the instant case, the haste in which 30 years old dealership was terminated even without giving show-cause notice and/or giving an opportunity of hearing clearly indicates that the entire exercise was carried out by the respondent Corporation on non-existent, irrelevant and on extraneous considerations. There has been a total violation of the provisions of law and the principles of natural justice...."

22. Applying the same analogy to the present context, 16 years experience of the Petitioner has not

been taken into consideration and the order of termination of contract has been passed without complying the Principles of Natural Justice or without giving opportunity of hearing to the Petitioner, which clearly indicates that the entire exercise has been carried out by Opposite Party No.1 on irrelevant and extraneous consideration.

23. In ***Dharampal Satyapal Limited*** (supra), the apex Court held that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other Quasi-judicial Authorities and other Tribunals and ultimately, law is now clearly laid down that even in the administrative actions, where the decision of the Authority may result in civil consequences, a hearing before taking a decision is necessary.

24. In ***East India Commercial Co. Limited Vs. Collector of Customs***, AIR 1962 SC 1893, the apex Court held that whether the Statute provides for notice

or not, it is incumbent upon the Quasi-judicial Authority to issue a notice to the persons concerned disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that Principles of Natural Justice are violated.

Similar view has also been taken in ***Union of India v. Madhumilan Syntex (P) Ltd.***, (1988) 3 SCC 348; ***Morarji Goculdas B&W Co. Ltd. V. Union of India***, 1995 Supp (3) SCC 588; ***Metal Forgings v. Union of India***, (2003) 2 SCC 36 and ***Union of India v. Tata Yodogawa Ltd.***, (2015) 9 SCC 102.

25. Therefore, applying the said principle to the present context, where no personal hearing was given to the Petitioner while taking drastic action against him in terminating his contract and also forfeiting the security amount and Bank Guarantee by the Opposite Parties, it can be held that the impugned action of the Authorities cannot be sustained in the eye of law.

26. It was vehemently contended by Mr. D. Nayak-A, learned Counsel appearing for Opposite

Parties No.1 to 3, that since alternative remedy is available to the Petitioner in terms of the Agreement itself, he should have availed the same, instead of approaching this Court by means of this Writ Petition. But fact remains, this question remains no more *res integra*, in view of judgments of the apex Court in **Whirpool Corporation** (supra), **Harbanslal Sahni v. Indian Oil Corporation Ltd.** (2003) 2 SCC 107 and **Radha Krushna Industries v. State of Himachal Pradesh & Ors.**, 2021 SCC Online SC 334, in which the apex Court summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy, which reads as follows:-

“28. The principles of law which emerge are that:

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied)

Considering the principles, as mentioned above, the Petitioner's case falls under the third principle, i.e., Exceptions to the rule of alternate remedy arise where there has been a violation of the Principles of Natural Justice. Thereby, the objection raised by Mr. D. Nayal-A, learned Counsel appearing for Opposite Party No. 1 to 3, cannot sustain in the eye of law and, as such, availability of alternative remedy cannot be absolutely a bar to invoke the jurisdiction under Article-226 of Constitution of India.

27. For all the above reasons, this Court is of the considered view that the order dated 27.09.2016 under Annexure-8, terminating the H&T Contract on account of breach of contract under Clause-XI(b) of MTF by forfeiting the security deposit including Bank Guarantee lying with FCI against the contract, cannot sustain in

the eye of law. Accordingly, the same is liable to be quashed and is hereby quashed.

28. The Writ Petition is allowed. However, there will be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

S. K. MISHRA, J.

I agree.

(S. K. MISHRA)
JUDGE

Orissa High Court, Cuttack
The 18th July, 2022, Alok

