IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1854 of 2012
In
Civil Writ Jurisdiction Case No.783 of 2011

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(i) NHPC through its CMD, NHPC Office Complex, Sector-33, Faridabad, (Haryana).
(ii) The Executive Director, NHPC Limited, Patna Region, Vidyut Bhawan, Bailey Road, Patna.
(iii) The Chief Engineer (I/c), BRRP, NHPC Limited, Vidyut Bhawan, Bailey Road, Patna.
(iv) The Senior Manager, PIU-Vaishali.
(v) The Standing Empowered Committee through its Chairman Narendra Kumar Camp NHPC Office, BRRP, Patna, Vidyut Bhawan, Bailey Road, Patna.

... ... Appellant/s

Versus

Ramakant Singh, S/o Late Ram Khelawan Singh, resident of 101, Lotus Apartment, New Patliputra Colony, P.S.-Patliputra, District-Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Rajeshwar Prasad, Advocate
For the Respondent/s	:	Mr. Umesh Pd. Singh, Sr. Advocate
		Mr.Lal Babu Singh, Advocate
		Mr. Nilesh Kumar Pandey, Advocate
		Mr. Vaibhava Veer Shanker, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 17-03-2023

Heard learned counsel for the appellants and learned counsel for the respondent.

2. The present L.P.A. is directed against the order dated 18.05.2012 passed in CWJC No. 783 of 2011 by the learned Single Judge of this Court whereby and whereunder the civil writ petition filed by the petitioner/respondent herein has been allowed with certain observations and directions.

3. The writ petitioner/respondent herein filed the writ

petition claiming following reliefs :

> *"(i) For quashing of the part of the decision of the Standing Empowered Committee dated25.11.2010 so far as the Standing Empowered Committee concluded (a) termination of the contract by the respondents due to fundamental breach by the petitioner as per the provisions of the contract for package no.BR-3613, (b) contractor"s claim on account of material at site, loss of profit, hire charges for machine and equipments, advance to supplier, site expenses, litigation expenses, prospective loss of profit and interest are not admissible.*
>
> *(ii) For appropriate declarations that (a) the rescinding of the agreement on the basis of admitted fact is on account of employer's convenience and not on account of fundamental breach of the contractor, (b) in the absence of finalization of rate, final determination of payable amount including variation in quantity, extra item, the action of rescinding and consequential decision of forfeiture of security and bank guarantee is wholly without jurisdiction.(iii) For a direction to the respondents to release the security deposit, bank guarantee forthwith and further direction to the respondents to work out and finalize the rate of extra item, prime coat and variation in quantity and make payment.*

(iv) For a direction to the respondents to refrain from acting upon the decision of the Standing Empowered Committee so far as realization of liquidated damage in terms of contract data is concerned.
(v) For any other relief of consequential reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case".

4. The facts of the case, as it appears from the record, may be summarized as follows :-

The writ petitioner/respondent herein being a registered Class-1A contractor was invited by the respondents-appellants herein for execution of Package No.BR-3613- Construction of road Mahnar (Nayatola) to Bhagwanpur (T-04) & (L-30) in Block-Mahnar, Jandaha, Mahua. The acceptance of the tender of the petitioner intimated vide letter no.4038-40 dated 18.07.2005. In terms of acceptance, the writ petitioner furnished bank guarantee to the tune of Rs.64,15,000/- on 08.09.2005 and further another bank guarantee dated 21.03.2006 for an amount of Rs.18,46,000/-. Meanwhile, on 03.11.2005, an agreement was executed between the writ petitioner and the respondent Chief Engineer in relation to Package No.BR-3613. Further case of the writ petitioner is that during execution of Package No.BR-3613, the contractor faced a number of problems on account of obstruction created by a land owner, who claimed that his personal land was being used without acquisition for construction of the road. The writ petitioner drew the attention of the respondent to this fact vide letter dated 15.12.2006. During execution of the agreement, the writ petitioner was forced by the Engineer at site to work as per his dictate and against the provisions of the agreement. The writ petitioner made correspondences in this regard since time was unnecessarily being wasted as Engineer at site had asked the writ petitioner to carry out premix carpet work with lesser thickness than as was provided in the agreement. The writ petitioner also faced problem of non-availability of emulsion and other materials which adversely affected the work of construction. Further, the grievance of the writ petitioner was that the respondents were obliged to make payment for the bill raised in the nature of advance against running on account bill but they delayed payment on one or the other pretext. Furthermore, the writ petitioner was asked to carry out the additional construction in the nature of Grade-III (WBM) but the variation has not been approved till the date of filing of the writ petition and the writ petitioner was denied the payment, though the writ petitioner completed the aforesaid work even though there was no provision for the same in the agreement. Thus, the construction work suffered adversely due to the lapses on part of the respondents either in the matter of non-payment of the bill or on account of their defective estimates. Thereafter, on 21.05.2009, a meeting was convened to work out the solution of the problem faced by the writ petitioner and in the said meeting, it was resolved to make all efforts for settlement of the account by 04.06.2009 in relation to earth work. It was also agreed by the respondents to settle the balance deviation which was assured and the writ petitioner agreed to commence construction of culvert and other bituminous work. The writ petitioner kept on requesting the respondent authorities for payment of outstanding dues and for approval of the variation and the quantity regarding prime coat but no action was taken by the respondents and rather vide letter no.4756 dated 25.09.2009 of respondent Chief Engineer, the writ petitioner was communicated the decision of the respondents to terminate the contract. After receipt of the said letter, the writ petitioner made a request on 08.10.2009 to the respondents to reconsider and revoke the order/decision of terminating the contract. But on 01.10.2009 vide letter no.4750, the respondents encashed the bank guarantee without intimation to the writ petitioner. The writ petitioner came to know about invocation of bank guarantee when he received letter no.925 dated 06.10.2009 issued by the respondent Branch Manager, Indian Overseas Bank, Patna Branch. The writ petitioner claimed that the decision to terminate the contract was illegal, arbitrary and contrary to the scheme of the agreement. The respondents failed in discharge of their duties and the reasons assigned in the letter terminating the contract were only a camouflage and skin saving tactics and clause 52.2 was not attracted in the instant case. The further contention of the writ petitioner is that moreover under the letter of termination dated 25.09.2009, the date of 15.10.2009 was fixed for joint measurement, but before measurement the respondents arbitrarily and unilaterally decided to encash the bank guarantee and under the facts and circumstances, it was arbitrary and malafide. Against the decision of the respondents, the writ petitioner filed CWJC No. 15016 of 2009 before this Court for quashing the decision terminating the contract, for quashing the decision relating to invocation of bank guarantee, for direction to the respondents to make payment of the unpaid bill of the petitioner, for refund of the illegal and unauthorized encashed bank guarantee, for direction to the respondent bank to refrain from acting upon letter no.925 dated 06.10.2009 in the matter of illegal invocation of bank guarantee with certain other appropriate directions. However, the writ petition was withdrawn on 23.03.2010 for exploring the alternative remedy. It has been specifically mentioned in the counter affidavit filed in CWJC No.15016/2009 on behalf of NHPC that the petitioner had alternative remedy under clause 24 of the General Conditioin of Contract (GCC). The writ petitioner, after withdrawal of the writ petition, filed reference case before the Bihar Public Works Contract Disputes Arbitration Tribunal, Bihar, Patna. However, vide order dated 29.04.2010, the Tribunal declined to entertain the reference case as the dispute did not pertain to the works contract of the State of Bihar. Accordingly, the writ petitioner approached the respondents for redressal of the grievance and adjudication of the dispute in terms of clause 24 of the GCC and filed the statement of claim before the Standing Empowered Committee. The Standing Empowered Committee vide its decision dated 25.11.2010, held the writ petitioner to be accountable for breach of the agreement ignoring a number of lapses on the part of the respondents and the said decision was arrived at without following the principles of natural justice. The writ petitioner impugned the decision of the Standing Empowered Committee before the learned Single

Judge in his writ petition claiming it to be illegal, arbitrary and in violation of the principles of natural justice and fair play. After hearing the parties, the learned Single Judge allowed the writ petition of the petitioner and operative part of the order dated 18.05.2012 is quoted below for ready reference :

> "3*1. In view of the aforesaid facts and circumstances as well as the settled principles of law, the decision of the Standing Empowered Committee dated 25.11.2010 (Annexure-15) as well as the order of the Chief Engineer (1/C BRRP) NHPC dated 25.09.2009 (Annexure-7) terminating the contract are hereby quashed and it is held that the petitioner is entitled to refund of his full security deposit, bank guarantee and liquidated damages recovered from the petitioner and the value of work done and measured but not paid, all as per the claim sheet attached to letter of NHPC dated 03.02.2011 annexed with I.A. No.3009 of 2011 as Annexure-1 thereof, which is the document of respondents themselves, along with interest at the rate of 8% per annum from the date of termination of contract i.e.25.09.2009".*

5. Feeling aggrieved and dissatisfied with the

aforesaid order of the learned Single Judge, the appellants have preferred the instant LPA.

6. The respondents-appellants herein took the preliminary objection about the maintainability of the writ petition in the instant case as it being purely a contractual obligation and non-statutory in nature. The appellants submitted before the writ Court that the contract was terminable for the reason given in the contract. It has been further submitted that the writ petitioner has an efficacious remedy against the decision of the Standing Empowered Committee as stipulated in the contract to approach the court having jurisdiction under clause 24.5 of the General Conditions of Contract (GCC). The writ petitioner without exhausting the said remedy has invoked the extraordinary jurisdiction of this Court. It has been submitted on behalf of the respondents that the termination of contract is one of the facets of commercial law. The contract was terminated as per the provisions of the contract and the writ Court has no jurisdiction to entertain and adjudicate upon the petition as the relief/prayer stated in the petition fall within the competence of civil court. The matter involves disputed questions of facts which are required to be proved by way of adducing of evidence which is within the competence of civil

court and such question cannot be decided in the writ petition. It has further been submitted on behalf of the respondents/appellants herein that the relationship between the contracting parties are to be governed by the contract between the parties. When the contract is terminable for the reasons given in the contract, a party has a right to terminate the contract. As per GCC, the intending completion date for the whole of the work was 12 months after the start of the work and it was required to be completed by 12.11.2006 by the writ petitioner. The completion date was further extended thrice up to 31.03.2007 at the request of the writ petitioner.

7. In paragraph 4 of the counter affidavit, the respondents/appellants herein made the following submissions :

> *"....The petitioner right from the beginning failed and neglected to carry out his obligations under the contract and committed defaults in complying with the terms and conditions of contract. The petitioner from time to time was asked by the respondent to accelerate the work and deploy adequate resources commensurate with the work programe but he failed to demonstrate any improvement in the work. So much so, the petitioner stopped the work*

unauthorized for more than 28 days on many occasion in utter violation of contractual conditions. The petitioner even failed to effect and to keep in force the contractors all risk policy (C.A.R.) as stipulated in the contract under clause 52.2 (a) (e) and (f) of the General Condition of Contract (Annexure-7) and invoked the bank guarantee on 01.10.2009. the action of the respondents is thus in accordance with law and contractual provisions. The termination of the contract has been decided to be as per provisions of the contract by the Standing Empowered Committee which was constituted to deliberate upon the dispute between the parties. The said committee after according full opportunity gave a reason decision. The said report is annexure-15 of the writ application".

8. It has been further submitted on behalf of the appellants that rate of extra item i.e. prime coat was finalized and its cost has been calculated to be Rs.6,56,805.16. The claim sheet was prepared and the variation has been worked out. The provision of Clause 53.1 of the GCC has been invoked for violation of fundamental breach of contract under clause 52.2 (a) (e) and (f)

of the GCC, thereafter, calculation has been done and the claim sheet has been made. It has been further submitted on behalf of the appellants that the claim sheet shows recovery from the writ petitioner and, therefore, the question for payment did not arise. The writ petitioner was in fact liable for payment of liquidated damages. The contract was terminated under clause 52.2 of the GCC for the writ petitioner having been committed fundamental breach of the agreement. The appellants claimed that even after forfeiting the security deposit and bank guarantee the claim sheet shows recovery from the writ petitioner. Further due to incomplete work of the writ petitioner/respondent herein, the balance of work has been awarded to another contractor at a higher rate and the appellants have been put to loss on this account.

9. It has been further submitted on behalf of the appellants that the obstruction stated to have been caused by one Umesh Kumar Singh and brought to the notice of the appellants vide petitioner's letter dated 15.12.2006 during the execution of brick soling work was looked into by the respondent and the respondent sorted out the same within a week. In fact, the writ petitioner has been attempting to make out a case to cover up his own lapses. The change in the thickness of PMC from 37.5 mm.

to 20 mm and, thereafter, 20 mm to 37.5 mm was in terms of directions issued from time to time by National Rural Infrastructure Development Agency (NRRDA), Govt. of India. It was not at the whims of the respondents and the relevant communication received from NRRDA has been annexed with the counter affidavit filed before the writ Court. Then there was sufficient quantity of G.S.B. Jhama metal available nearby location of site and the writ petitioner did not execute the work of emulsion in the year 2006 and it was only executed in the year 2007. Moreover, letter dated 28.03.2006 of the writ petitioner does not speak about emulsion but only speaks about GSB Jhama metal. Further writ petitioner's contention regarding non-payment of running account bill is completely false. The writ petitioner had been paid running account bill regularly during the period of execution of the work. The amount of pasyment due for prime coat is a meager amount and the writ petitioner has been demanding this payment only for making out a case and for recovering up his own lapses.

10. It has been further submitted on behalf of the appellants that no additional construction of WBM III has been done by the writ petitioner and for the work which has been

executed, the writ petitioner has already been paid. It has been further submitted that prime coat is the integral part of the premix carpet (PMC) i.e. black topping. The writ petitioner proceeded with the work of prime coat and pre-mix carpet but did not complete the same. The writ petitioner was asked from time to time by the respondent to accelerate the work and deploy adequate resources commensurate with the work programme, but he failed to demonstrate any improvement in the work. So much so, the writ petitioner stopped the work unauthorizedly for more than 28 days on many occasions in utter violation of contractual condition. The writ petitioner even failed to effect and to keep in force the Contractor's All Risk Policy (CAR) as stipulated in the contract which lapsed on 23.02.2009. The respondents despite noticing various defaults of the writ petitioner and as a last resort only with a view to ensure completion of work held a meeting with the writ petitioner on 21.05.2009 to solve the issues and fix up the programme to restart the work in respect of the Package No.BR 3613. It was agreed by the writ petitioner that shifting of material i.e. aggregate and bitumen would be carried out with effect from 23.05.2009 and hot mix plant would be started by 27.05.2009. It was further discussed and decided in the said meeting that on an average minimum of 300 mts per day PMC would be done by the writ petitioner. The writ petitioner also agreed to commence construction of culvert from 27.05.2009 in the said minutes. The writ petitioner did not ask for payment of prime coat but he had asked for settlement on account of earthwork. The writ petitioner failed and neglected to abide with the said minutes of the meeting.

11. The learned counsel for the appellants further submitted that the contract was terminated due to fundamental breach committed by the writ petitioner and the respondents were under no obligation to intimate the contractor regarding encashment of bank guarantee, once the decision for forfeiting the bank guarantee has been communicated vide the termination notice. The date for joint measurement was fixed after the termination of the contract only to arrive at the final dues recoverable/payable to the contractor. But the amount which was recoverable is much more than the amount recoverable by way of encashment of bank guarantee.

12. It has been further submitted on behalf of the appellants that the Standing Empowered Committee called both the parties, i.e., the claimant and the respondent after the writ petitioner filed his claim before it under clause 24 of GCC. Both

the parties were present and put their signatures at the attendance sheet. The Standing Empowered Committee was constituted as per the provisions of agreement , thus, there was no question of biasness.

13. It has been further reiterated on behalf of the appellants that the contract was terminated due to fundamental breach of the contract and there was no unpaid bill and after final measurement, the final quantity sheet had been provided to the writ petitioner. It has also been reiterated that remaining work was allotted to another contractor under separate agreement and separate estimated cost has been analyzed.

14. Thus, it has been submitted by the learned counsel for the appellants that the learned Single Judge did not take into consideration these facts and order impugned is erroneous on this account.

15. On the other hand, learned senior counsel appearing on behalf of the respondent has reiterated the contention taken in the writ petition and rejoinder filed to the counter affidavit in the writ petition which have been discussed hereinabove under the facts of the case of the writ petitioner/respondent herein. The learned senior counsel for the writ petitioner/respondent herein submitted that writ petition field by the writ petitioner is

maintainable and the learned Single Judge vide order dated 04.08.2011 passed in CWJC No.783 of 2011 upheld the maintainability of the writ petition before it.

16. In this regard, the learned senior counsel appearing on behalf of the respondent relied on the following decisions of the Hon’ble Apex Court :

(i) (2015) 13 SCC 592, Ram Barai Singh and Company Vs. State of Bihar and Ors.)
(ii) (2015) 16 SCC 125, Indian Oil Corporation Ltd. Vs. Nilofer Siddiqui and Ors.
(iii) (1991) 2 SCC 407, Lamba Industries Vs. Union of India and Ors.
(iv) (2011) 5 SCC 758, J.G. Engineers Private Ltd. Vs. Union of India and anr.
(v) (2011) 5 SCC 697, Union of India and Ors. Vs. Tantia Construction Pvt. Ltd.

17. The learned senior counsel for the respondent further submitted that since there was no provision for appeal against the order of the Standing Empowered Committee, the respondent was well within his rights to approach this Court under the writ jurisdiction. The learned Single Judge considering all the aspects of the matter passed the impugned order and there is no infirmity in it.

18. The learned senior counsel for the respondent further submitted that the encashment of bank guarantee was an illegality as the respondent Chief Engineer has absolutely no jurisdiction under the agreement to encash the bank guarantee and that too unilaterally. In this regard, learned counsel relied on the Apex Court decision rendered in (***2017) 16 SCC 757, Suresh Kumar Wadhwa Vs. State of Madhya Pradesh and Ors.*** *wh*erein ***Union of India Vs. Vertex Broadcasting Co. (P) Ltd., (2015) 16 SCC 198*** has been discussed in which it has been held *inter alia* by the Apex Court that in absence of any power in the contract to forfeit the licence money deposited by the licensee, the action of the Union to forfeit the licence fees was held to be illegal.

19. Having regard to the rival contentions of the parties, the questions for consideration before this Court are as follows :

> (i*) Whether the writ petition filed by the petitioner/respondent herein was maintainable or not?*
>
> *(ii) If the writ petition is found to be maintainable, whether it is premature in the light of the impugned decision of the Standing Empowered Committee?*
>
> *(iii) If it is said to be maintainable, in that event, whether clause 24.3 Part II of GCC read with the agreement dated 03.11.2005*

becomes void and whether any declaration by a competent forum is mandatory for considering the clause 24.3 as void?

(iv) Whether the learned Single Judge committed error in entertaining the writ petition?

20. From the discussions of the case of the parties, one glaring aspect is that the issues, which have come before this Court, all sprang up after termination of contract between the parties and arise out of contractual obligation between the parties.

Clauses 24 and 25 of GCC read as follows :

"24. Dispute Redressal System

24.1. *If any dispute or difference of any kind what-so-ever shall arise in connection with or arising out of this Contract or the execution of Works or maintenance of the Works thereunder, whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the competent authority, described along with their powers in the Contract Data, above the rank of* *the Engineer. The competent authority shall, within a period of forty-five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall subject to review as hereinafter provided be final and bindings upon the Contractor. In case the works is already in progress, the Contractor shall proceed with the execution of the works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.*

24.2. *Either party will have the right of appeal, against the decision of the competent authority, to the Standing Empowered Committee if the amount appealed against exceeds rupees one lakh.*

24.3.The composition of the Empowered Standing Committee will be ;

I. One official member, Chairman of the Standing Empowered Committee, not below the rank of Additional Secretary to the State Government;

II. One official member not below the rank of chief engineer; and

III. One non-official member who will be technical expert of Chief Engineer's level selected by the Contractor from a panel of three persons given to him by the Employer.

24.4 *The Contractor and the Employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the Contractor and the Employer for oral arguments for a specified period. The Empowered Committee shall gave its decision within a period of ninety days from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.*

24.5. *The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to five percent of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims". If he does not accept the decision, he is not barred from*

approaching the courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of five percent of the Initial Contract Price, he
will be free to approach the courts applicable under the law."
***"25.** Arbitration*
***25.1.** In view of the provision of the clause 24 on Dispute Redressal System, it is the condition of the Contract that there will be no arbitration for the settlement of any dispute between the parties."*

21. From bare reading of the above two clauses, it is apparent that if any dispute arises between the parties, then either of the parties will have a right of appeal against the decision of the competent authority before the Standing Empowered Committee. Further the Committee is required to give its decision within a period of 90 days from the date of appeal failing which the contractor can approach the Court for resolution of the dispute. Furthermore, if the contractor does not accept the decision of the Committee, he has got a right to approach the Court. At the same time, Clause 25 bars settlement of dispute by arbitration and for settlement of any dispute, the

aggrieved party would have to approach the competent authority, i.e., the Standing Empowered Committee and against the decision of the Standing Empowered Committee, there is recourse to the Court of competent jurisdiction.

22. Now, coming back to the facts of the case, it is undisputed that the petitioner/respondent herein is aggrieved by the decision of the Standing Empowered Committee and has approached this Court under extraordinary powers of this Court under Article 226 of the Constitution of India. At the same time, it is also undisputed that there are certain disputed issues relating to execution of contract between the parties which involved appreciation of disputed facts regarding work done, breach of contract, payment for the work, payment for the work executed and claim and counter claim of the parties against each other.

23. Law on the point of jurisdiction of this Court to entertain the petition under Article 226 of the Constitution of India has come up before the Apex Court for consideration in a number of cases. In ***ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. & Ors.,*** reported in ***(2004) 3 SCC 553,*** the Apex Court in paragraph 27 has held as under :

> *"**27.** From the above discussion of ours, the following legal principles emerge as to the*

maintainability of a writ petition:

(a) 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.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable".

24. Further, it is nobody's case that the High Court or the Supreme Court have got unfettered jurisdiction to entertain a petition against any arbitrary and unlawful action on the part of the public authority. This extraordinary constitutional power has been vested in the higher courts to strike down any injustice and if the said act has been done in an arbitrary manner then even in the matter of contract an aggrieved party can approach the court by filing a writ under Article 226 of the Constitution and the court depending on the facts of the case is empowered to grant the relief as was held in ***ABL International Ltd.*** (supra) and ***the Union of India & Ors. vs. Tantia Construction Pvt. Ltd.*** (supra). But the present case on its facts can be distinguished from the cases cited by the petitioner/respondent herein,

wherever there are disputed questions of facts, the same cannot be adjudicated by this Court under its writ jurisdiction under Article 226 of the Constitution. Reliance could be placed on the decisions of Apex Court in ***Shalini Shyam Shetty & anr. Vs. Rajendra Shankar Patil***, reported in ***(2010) 8 SCC 329*** *and* ***Union of India and Ors. Vs. Puna Hinda, reported in (2021) 10 SCC 690.***

25. So, we are unable to agree with the contention of the petitioner/respondent herein that his writ was maintainable before the learned Single Judge. Termination of contract and subsequent action of the parties culminating in matter being decided by Standing Empowered Committee cannot be said to be something which requires interference by this Court under Article 226 of the Constitution and justify use of extraordinary power since the petitioner/respondent herein has utterly failed to point out any illegality of such nature that could justify the interference by this Court by entertaining the writ petition.

26. The writ petitioner/respondent herein has made allegation of bias against the decision of the Standing Empowered Committee, but the same lacks material on record. When the writ petitioner/respondent herein entered into agreement with the appellants, he was knowing since day one

that what would be the constitution of the Standing Empowered Committee, so he could not now turn around and say that being connected with the appellants, the Chairman and the Members of the Standing Empowered Committee acted in biased manner.

27. Furthermore, the Standing Empowered Committee has considered the rival submissions and has passed a speaking order, so its decision could not be faulted only on account that the persons manning the Committee were connected with the appellants in their official capacity or were person of the same field. Moreover, the claim of the writ petitioner/respondent herein that there was no provision of appeal against the decision of the Standing Empowered Committee is not sustainable in view of aforesaid Clause 24.05 of the GCC. Recourse to civil court or commercial court is always open to the writ petitioner/respondent herein.

28. Further, the Standing Empowered Committee has recorded the following conclusions on the basis of its findings :

> *(i) Termination of the contract by the respondent due to fundamental breach by the claimant is as per the provisions of the contract for work package No.BR-3613.*
> *(ii) Contractor's claim on account of (a) material at site, (b) loss of profit (c) hire charge of machine and equipment (d)*

advances to suppliers (e) site expenses (f) litigation expenses (g) prospective loss of profit and (h) interest are not admissible and hence rejected.

*(iii) The respondent has to finalize the rate of extra item prime coat immediately and work out final payable amount taking into account unpaid work done including variation in quantities, extra items, security deposit deducted, amount of securities in terms of bank guarantee, liquidated damage imposed till date as per provision of clause 53.1 of GCC within f*orty five days from the date of issue of this committee report".

29. Thus, the respondents were directed to work out final payable amount and it appears the writ petitioner approached this Court without finalization as directed by the Standing Empowered Committee and on this account, the writ before the learned Single Judge was premature.

30. Then, another issue which is to be taken notice by this Court is the contents of Clause 24.3, Part-I of GCC. If it is taken that the writ petitioner could have approached this Court against the rescinding of his contract and for his claim against the respondents for various omissions and commissions, that would

amount to giving burial to the Clause 24.2 of GCC since either party have the right to appeal against the decision of the Standing Empowered Committee, it would become void clause without any authority though it has been made part of the agreement between the parties. Unless this clause was challenged and declared to be void by any competent authority/forum, it could not be treated to be void as such. So, without going into the factual matrix of the case and disputed questions of the facts, we have no hesitation in holding that the learned Single Judge committed error while allowing the writ petition and hence, the present L.P.A. deserves to be allowed and is accordingly allowed. The order of learned Single Judge dated 18.05.2012 passed in CWJC No.783 of 2011, is set aside.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
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