

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE UJJAL BHUYAN
AND**

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT APPEAL NO: 310 OF 2023

Writ Appeal under clause 15 of the Letters Patent Preferred Against Order Dated 18/01/2023 Passed in W.P.No.23749 of 2022 on the file of the High Court.

Between:

M/s. Sanyu Infra Projects Private Limited, Rep. by its Managing Director Sri P. Sudarshan Reddy, Office at- Flat No.202, Plot No.124, Phase-2, Teja Apartments, Kavuri Hills, Madhapur, Hyderabad -500 034.

...APPELLANT

AND

1. The Union of India, Ministry of Railways, Rep.by its Secretary, New Delhi.
2. South Central Railway, Rep. by its General Manager, Rail Nilayam, III Floor, Secunderabad, Telangana.
3. South Central Railway, Rep. by its Divisional Railway Manager, Office of the Divisional Railway Manager(Works), Guntakal, Andhra Pradesh- 515 801.
4. South Central Railway, Rep. by its Senior Divisional Engineer-Coordination Office of the Divisional Railway Manager Guntakal, Andhra Pradesh- 515 801.
5. South Central Railway, Rep. by its Divisional Engineer'(South), Office of the Divisional Railway Manager, Guntakal, Andhra Pradesh- 515 801.
6. South Central Railway, Rep. by its Senior Divisional Finance Manager, Office of the Divisional Railway Manager, Guntakal, Andhra Pradesh-515 801.
7. The Branch Manager, Bank of Baroda, Tilaknagar Branch, D.No.2-2-1118/3/C/11,Tilaknagar X Roads, Hyderabad - 500 014.

...RESPONDENTS

I.A.NO:1 OF 2023

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance to Tender notice vide No.Engg-GTL-South-1199 dt. 18/05/2022 including issuing of fresh tender and allotting the subject work to third parties pending disposal of the above writ appeal.

Counsel for the Appellant :SRI.D.PRAKASH REDDY, ADV FOR SRI.J.VENUDHAR REDDY

**Counsel for the Respondent Nos.1 to 6 : SRI.GADI PRAVEEN KUMAR
(Dy. SOLICITOR GENERAL OF INDIA)**

Counsel for the Respondent No.7 : SRI.CHITTURU SRINIVAS

The Court made the following Judgment : -

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.310 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. D.Prakash Reddy, learned Senior Counsel for the appellant and Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent Nos.1 to 6.

2. This intra-court appeal is directed against the common order dated 18.01.2023 passed by the learned Single Judge dismissing writ petition No.23748 of 2022 and batch.

3. The present appeal arises out of writ petition No.23749 of 2022.

4. Appellant as the writ petitioner had filed the related writ petition assailing the action of respondent No.4 in terminating the contract work awarded to the appellant under Letter of Acceptance dated 29.09.2021 and consequently, forfeiting the bank guarantee.

5. Subject matter of the contract relates to construction of Road under Bridge (RuB). Pursuant to a tender process, appellant was awarded the contract and in this connection, Letter of Acceptance was issued on 29.09.2021. Without entering into the rival contentions, it is seen that there was delay in the execution of the work. While according to the appellant, the delay occurred because of respondent No.4 not taking prompt action in signing the contract agreement and subsequently in preparing and approving the drawings, on the other hand, according to the respondents, the delay was because of the appellant's failure to execute the work in a time bound manner. Ultimately, respondents issued seven (7) days notice followed by forty-eight (48) hours notice. It was thereafter that the contract was terminated by the respondents.

6. While according to the appellant, no notice was issued and no hearing was granted to the appellant before termination of the contract, it is the case of the respondents that the termination notice was uploaded in the common portal called Indian Railway- Works Contract Management

System (IRWCMS). After terminating the contract of the appellant, respondents forfeited the bank guarantee furnished by the appellant. This led to filing of the writ petition.

7. At the initial stage, interim order was passed by the learned Single Judge directing the respondents not to award contract for the balance work to third party contractors.

8. Respondents in their vacate stay petition which was treated as counter affidavit contested the very maintainability of the writ petition. On merit, it was contended that there was delay on the part of the appellant in executing the contract which is of public importance. Therefore, respondents were compelled to terminate the contract but before doing so, adequate notice was granted to the appellant.

9. Learned Single Judge held that though there is an arbitration clause in the contract, yet the writ petition is maintainable. In support of such conclusion, learned Single Judge has placed reliance on several decisions of the Supreme Court. However, learned Single Judge after entertaining the writ petition as being maintainable went into

the merit and held that appellant had failed to complete the contract work within the agreed time. On notice, learned Single Judge held as follows:

35. It is relevant to note that entire tender process and re-tendering process, submission of tender is online through respondent's e-mail ID. The aforesaid notices were placed in IRWMS site of the respondent Railways. However, the petitioner herein has filed copies of 7 days and 48 hours notice. Therefore, petitioner cannot contend that the said notices were not served on him. Therefore, according to this Court, there is no irregularity in terminating the aforesaid contracts by the respondents Railways and forfeiting the bank guarantee.

10. Government of India in the Ministry of Railways (Railway Board) has approved the new Indian Railways Standard General Conditions of Contract, July 2020. While Part I thereof lays down Regulations for Tenders and Contracts, Part II provides for Standard General Conditions of Contract. Clause 4 of the Standard General Conditions of Contract reads as follows:

4. Communications to be in writing: All notices, communications, reference and complaints made by the Railway or the Engineer or the Engineer's Representative or the Contractor *inter-se* concerning the works shall be in writing or e-mail on registered e-mail IDs and no notice, communication, reference or

complaint not in writing or through e-mail, shall be recognized.

11. From the above, it is seen that as per the Standard General Conditions of Contract all communications are to be in writing. All notices, communications, reference and complaints made by the Railways or the Engineer or the Engineer's Representative or the Contractor *inter-se* concerning the works shall be in writing or e-mail on registered e-mail IDs. No notice, communication, reference or complaint not in writing or through e-mail shall be recognized.

12. In the writ affidavit, appellant specifically pleaded in paragraph 7 that while it was waiting for approval of thrust-bed drawings and alternate solution, it had received a call from respondent No.4 on 02.05.2022 evening that it had been served with 48 hour notices for several bridges. Appellant had addressed a letter on 06.05.2022 to respondent No.4 and questioned illegal termination of contract without notice. In paragraph 10, this was elaborated upon by the appellant by stating that termination of contract and forfeiture of bank

guarantee was without any notice and hearing and thus being in violation of the principles of natural justice. Paragraphs 7 and 10 of the writ affidavit of the appellant reads as follows:

7. While so, we got a call from respondent No.4 on 02.05.2022 evening that we have been served with 48 hour notices for several bridges. Immediately we addressed a detailed letter on 06.05.2022 elaborating the entire issue involved in all the RUB works, and specifically stated that we did not receive any notice from them since 01.04.2022, much less 48 hours notice, and requested to revoke the termination of contract, if initiated and that the work is delayed due to non approval of TB drawings and non providing alternative reinforcement design in place of 28mm bars.

* * *

10. I submit that termination of contract and forfeiture of the BG by the respondent No.5, without issuing any notice and without any fault on the part of our company, is totally illegal, arbitrary and high handed and in violation of principles of natural justice and Article 19(1)(g) of Constitution of India. Due to such forfeiture and abrupt terminations of contracts, the Company went to deep financial crisis and unable to pay the vendors and meet the salaries of the workmen who are already deployed at the respective work sites and also huge material procedure at the work sites is at risk.

13. This was contested by the respondents in their application for vacate stay which was treated as the counter affidavit by stating as follows:

7. In reply to paras 1 to 3 of the petitioner affidavit filed in support of above writ petition, it is to submit that all the notices have been sent to the petitioner ID in Indian Railway - Works Contract Management System (IR-WCMS) (online platform for making agreements, recording bills, paying bills, granting extension of currency, issuing notices, etc.). The petitioner having participated in the tender and after getting the Letter of Acceptance is supposed to get all the agreements, bills, variation, currency extensions, etc., in Indian Railway - Works Contract Management System. The maintenance of their account, correctness of information being furnished is their responsibility and is as per Clause 6 of Annexure-V of General Conditions of Contract (GCC) submitted by the Tenderer at the time of participation in the said tender.

14. From the above, it is seen that stand taken by the respondents was that all notices were uploaded on IRWCMS i.e., the online platform. Appellant having participated in the tender and after obtaining Letter of Acceptance was supposed to get all agreements, bills, extensions etc., through the aforesaid online portal; it is the responsibility of the appellant to obtain such information.

15. Learned Single Judge observed that the termination notice was placed in the IRWCMS site. Appellant had filed copies of seven (7) days and forty-eight (48) hours notice which were issued prior thereto and therefore, appellant cannot contend that the said notices were not served upon the appellant. Learned Single Judge held that there was no irregularity in terminating the aforesaid contract by the respondents.

16. Before we proceed to deal with the above conclusion of the learned Single Judge, our attention has also been drawn to clause 64 of the Standard General Conditions of Contract which provides for arbitration. It is another matter that learned Single Judge has held the writ petition to be maintainable notwithstanding availability of the remedy of arbitration. Having entertained the writ petition, we are of the view that learned Single Judge instead of entering into the merit as to the justification for cancellation of contract, ought to have confined the deliberation to the decision making process. After all, judicial review is primarily concerned with the decision making process and not with the decision *per se*.

If the writ court feels that the decision making process is vitiated by non-compliance to the procedural requirements and violation of the principles of natural justice etc., certainly a writ court would be entitled to entertain a writ petition in exercise of its power of judicial review notwithstanding availability of alternative remedy. When clause 4 of the Standard General Conditions of Contract clearly provides that all notices, communications etc., should be in writing or on registered e-mail IDs, it means that the notices would have to be sent to the affected party in writing or to the registered e-mail ID of the affected party. Otherwise, clause 4 would have mentioned that such a notice would be uploaded or posted in IRWCMS portal. That having not been done, we are of the view that there is violation of the principles of natural justice inasmuch as due notice and adequate opportunity of hearing was not granted to the appellant before cancellation of contract.

17. Having said that we are of the view that appellant should be relegated to the forum of respondent No.4. Now that appellant is aware of the reasons for termination of

contract, let the appellant appear before respondent No.4 on 20.03.2023 at 11.00 am whereafter respondent No.4 shall take a fresh decision in accordance with law. All contentions are kept open. Needless to say, if the appellant is aggrieved by any decision that may be taken by respondent No.4, it will be open to the appellant to avail the remedy as provided in clause 64 of the Standard General Conditions of Contract.

18. This disposes of the writ appeal. However, there shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

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SD/-K.SAILESHI
DEPUTY REGISTRAR

SECTION OFFICER

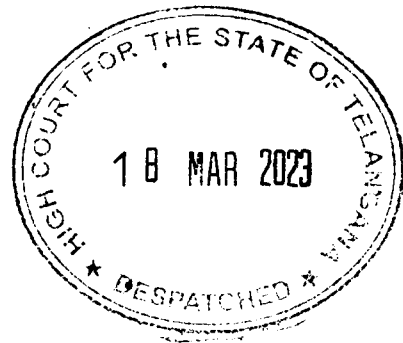
To

1. The Secretary, Union of India, Ministry of Railways, New Delhi.
2. The General Manager, South Central Railway, Rail Nilayam, III Floor, Secunderabad, Telangana.
3. The Divisional Railway Manager, South Central Railway, Office of the Divisional Railway Manager(Works), Guntakal, Andhra Pradesh- 515 801.
4. The Senior Divisional Engineer, South Central Railway, Coordination Office of the Divisional Railway Manager Guntakal, Andhra Pradesh- 515 801.
5. The Divisional Engineer (South), South Central Railway, Office of the Divisional Railway Manager, Guntakal, Andhra Pradesh- 515 801.
6. The Senior Divisional Finance Manager, South Central Railway, Office of the Divisional Railway Manager, Guntakal, Andhra Pradesh-515 801.
7. The Branch Manager, Bank of Baroda, Tilaknagar Branch, D.No.2-2-1118/3/C/11, Tilaknagar X Roads, Hyderabad - 500 014.
8. One CC to SRI.J.VENUDHAR REDDY, Advocate [OPUC]
9. One CC to SRI.GADI PRAVEEN KUMAR (Dy. SOLICITOR GENERAL OF INDIA) Advocate [OPUC]
10. One CC to SRI.CHITTURU SRINIVAS, Advocate (OPUC)
11. Two CD Copies

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HIGH COURT

DATED:14/03/2023



JUDGMENT

WA.No.310 of 2023

**DISPOSING OF THE W.A
WITHOUT COSTS.**

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MA
18/3/23