

19 & 20  
14.03.2024  
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IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P.A. No. 3683 of 2024  
with  
W.P.A. No. 5965 of 2024

Pritam Chatterjee  
Vs.  
Union of India & Ors.

Mr. Suddhasatva Banerjee,  
Ms. Akanksha Mukherjee  
...for the petitioner

Mr. Atarup Banerjee,  
Ms. Rini Bhattacharyya  
...for the Respondents

1. Since the writ petitions are connected, both are taken up together for hearing.
2. W.P.A. 5965 of 2024 has been preferred against the termination of the petitioner's contract by the Senior Divisional Commercial Manager, Eastern Railway, Sealdah Division.
3. W.P.A. 3683 of 2024, on the other hand, is challenging the delay on the part of the respondents in taking a call on the petitioner's approach to the respondents for a re-working of the rates payable by the petitioner under the contract, which was awarded by a tender to the petitioner.
4. Learned counsel for the petitioner submits that after getting the work for collecting parking charges and paying fees therefor, the petitioner paid the dues to the respondents for the first quarter.

Possession was given to the petitioner on November 23, 2023 but subsequently a part of the property was taken back by the authorities for undertaking certain repair and associated works on December 06, 2023. Thereafter, the same was made available to the petitioner once again on January 15, 2024.

5. It is argued that since the property was not available to the petitioner during the relevant period, the petitioner could not have earned any substantial amount under the contract for which the re-working was sought.

6. Since the authorities sat tight over the matter, the petitioner has filed W.P.A. 3683 of 2024.

7. It is argued by the petitioner that surprisingly, during the pendency of W.P.A. 3683 of 2024, the contract of the petitioner was terminated primarily on the ground that the petitioner, in haste, filed the previous writ petition.

8. It is submitted that such ground being not sanctioned under the contract, the termination is arbitrary and ought to be set aside.

9. Heard learned counsel for the parties.

10. Learned counsel appearing for the respondent-authorities points out that there were other grounds given in the termination letter.

11. A perusal of the termination letter shows that the primary ground for such termination was that according to the respondents, it was evident that

the petitioner was in the haste to file a court case to get a relief from this Court as he filed the previous writ petition after a gap of three days from the date of service of the petitioner's representation dated February 05, 2024 with the request to refund an amount or extend the contract period for a period of 40 days without any levy of any form of penalty and not to terminate the contract and/or levy any penalty for delay in payment.

12. The respondent-authorities, accordingly, placed strict reliance on the IREPS (Indian Railways E-Procurement System) Module under which the due date for the payment of licence fee of second quarter of first year was February 08, 2024 and the grace period ended on February 15, 2024. Apparently, on the ground of failure of the petitioner to pay the amount within the said period, the termination was effected.

13. It is evident from a bare perusal of the termination letter that the same was actuated purely by malice on the part of the respondent-authorities.

14. The primary ground, as evident from the same, is that the petitioner had preferred the prior writ petition.

15. Even otherwise, a brief delay on the part of the petitioner in payment of the amount due could not be a justified ground for the disproportionate

penalty of termination at the first instance, in view of the petitioner's request for reconsideration pending for some time before the respondent-authorities themselves and the said authorities having not taken a call thereon.

16. The respondents have submitted that the petitioner's request has been forwarded to the appropriate authorities in the meantime. However, even if the respondents have done so, they ought to have stayed their hands insofar as the termination is concerned, all the more, since the matter was pending for a final decision before them.

17. Thus, the impugned termination, being arbitrary, disproportionate, unreasonable and malicious, is hereby set aside.

18. W.P.A. No. 5965 of 2024 is, accordingly, allowed.

19. Insofar as W.P.A. No. 3683 of 2024 is concerned, since the petitioner's request for re-working of the terms of the contract, in view of the petitioner not being in possession of the premises for a period due to no fault of the petitioner, is already under consideration before the respondent-authorities, it would be premature for this Court to decide on the issue.

20. Accordingly, W.P.A. No. 3683 of 2024 is disposed of by directing the respondent nos. 2 and 3 to ensure that a decision is taken by the said

authorities on the petitioner's request for re-working the amounts payable by the petitioner, alternatively for extension of the contract period.

21. It is expected that such decision will be taken, if necessary upon seeking necessary clarification from the petitioner, as expeditiously as possible, positively within four weeks from date.

22. The outcome of the said decision shall be communicated to the petitioner immediately thereafter in writing.

23. Since no affidavits have been directed, it is deemed that none of the allegation made in the writ petition are admitted by the respondents.

24. There will be no order as to costs.

25. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)