

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 12871 of 2024

VDL Sports Education and
Management Service Private Limited
Vs.
Union of India & Ors.

Mr. Billwadal Bhattacharyya,
Mr. Abhishek Dey,
Mr. Kushagra Maskara
...for the petitioner

1. Despite service, none appears for the respondents.
2. Affidavit of service filed in court today be kept on record.
3. The petitioner entered into a lease agreement with the respondent-authorities in terms of an Expression of Interest floated by the respondent-Railways on September 11, 2022. The letter of intent was issued to the petitioner on December 08, 2022. Subsequently, the petitioner claims to have invested huge amounts of money to the tune of Rs.9.4 Crore approximately in the project of building of a stadium and allied structures and services.

4. All on a sudden, on March 07, 2024 a letter was issued to the petitioner with a copy to the lessor, which alleged that the structural drawing, on the basis of which the petitioner has been constructing a G+4 building, was not approved by the concerned Department of the Railway, that is, the Engineering Department. A copy was also sent to the lessor requesting the latter to get all the constructional activities stopped that are going on at the Divisional sports ground, Gulmohar, Howrah and also to review the present agreement executed with the petitioner and take administrative decision to close the agreement as it is not in order with existing Land Management Policy of the Railway Board's Master Circular dated October 04, 2022.

5. Pursuant thereto, mechanically, the Divisional Sports Officer/DSA and Senior DEE(G)/Howrah, Eastern Railway, issued to the petitioner a three months' notice of termination of agreement on April 05, 2024.

6. Challenging both the said notices, the present writ petition has been preferred.

7. Learned counsel for the petitioner submits that the lessor is acting on the dictation of the Senior Divisional Engineer of the Eastern Railway, Howrah. Moreover, all principles of natural justice have been flouted since there is limited scope of early termination of the contract apart from in

cases of serious and repeated violations of clauses of the contract.

8. In the present case, the petitioner is armed with an approved structural design of the construction being made by it. Moreover, no prior notice or opportunity of hearing was given to the petitioner to represent that the petitioner has not been in breach of the contract in any manner, let alone repeatedly.

9. Since the respondents choose not to appear despite notice, the matter is taken up for hearing in the absence of the respondents.

10. A bare perusal of the impugned communication dated March 07, 2024 indicates that a unilateral decision was taken on the count of the structural drawing of the petitioner not being approved, without giving an opportunity to the petitioner to satisfy the authorities as to such approval being there.

11. Moreover, the decision to review the present existing agreement and to close the same is palpably *de hors* the provisions of the agreement itself.

12. The provisions of the relevant terms of the agreement as quoted in the communication dated April 05, 2024 envisage that considering the capital intensive nature of the work, an early termination in first five years would be executed only in exceptional cases where there is repeated

violation/breach of contract/failure to develop facility of requisite standards and improvement is not visible upon advise from railway administration.

13. However, in the present case, there is not even any allegation of any violation, breach of contract or failure to develop facility being involved.

14. In the absence of such allegations, the action taken by the respondent-authorities to issue a three months' notice of termination was *de hors* the agreement.

15. Moreover, in order to come to a conclusion or to make an allegation that there have been repeated breaches of the contract, it was incumbent on the respondent-authorities to give a prior hearing/representation to the petitioner to satisfy the authorities that there was no such breach of contract. In the present case, in fact, there is not an iota of the nature of the breach, which has been allegedly committed by the petitioner, at all.

16. Thus, the impugned communication dated March 07, 2024 as well as the notice dated April 05, 2024 are palpably vitiated in law, being contrary to natural justice as well as violative of the agreement between the parties

17. Insofar as the dispute resolution clause is concerned, the same has been captioned as "Dispute Resolution/Arbitration". Considering from

the perspective of arbitration, the said clause vests the power of adjudication on the General Manager of the Railway itself, which is a party to the dispute, and is thus violative of Section 12 of the Arbitration and Conciliation Act, 1996. Taken from the standpoint of the Dispute Resolution, in view of the impugned action being palpably *de hors* the law and in violation of principles of natural justice, there is no absolute bar in the writ court taking up the issue and passing orders thereon.

18. In the light of the above observations, the impugned notice and communication cannot stand the scrutiny of law. Accordingly, W.P.A. No. 12871 of 2024 is allowed, thereby setting aside the impugned communication dated March 07, 2024 and the purported notice dated April 05, 2024, annexed at pages 203 and 211 of the writ petition respectively.

19. However, it is made clear that nothing in this order shall preclude the respondent-authorities to proceed against the petitioner in accordance with law to terminate the contract.

20. If the respondents decide to do so, it will be incumbent on the respondents to give a prior opportunity of representation to the petitioner by issuing a show cause notice indicating as to what are the exact breaches which have been committed, if any, by the petitioner.

21. There will be no order as to costs.

22. 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.)