

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11165 of 2025

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M/S R K Tech a proprietorship firm, having its registered office at NH-28 A, Bankat Bairiya, P.S. Muffasil, P.O.- Motihari, District- East Champaran- 845401 through its proprietor Mr. Raj Kumar Tripathi (male), aged about 45 years, Son of Ram Babu Tripathi, resident of Rajpur, Rajpur, P.O.- Rajpur, P.S.- Kesaria, District- East Champaran, Bihar- 845432.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Election Department, Government of Bihar, Patna.
2. The Principal Secretary, Election Department, Government of Bihar, Patna.
3. The Chief Electoral Officer, Election Department, Government of Bihar, Patna.
4. The Joint Chief Electoral Officer, Bihar, Patna.
5. The District Election Officer-cum-District Magistrate, Sitamarhi, Bihar.
6. The District Deputy Election Officer, Sitamarhi, Bihar.
7. The District Purchase Committee of NIT dated 23.08.2023 bearing PR No.007685 (Election) 2023-2024 through its Chairman-Deputy Development Commissioner, Sitamarhi, Bihar.
8. The Deputy Development Commissioner, Sitamarhi, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Sr. Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate Mr. Pratik Raj, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General Mr. Vikas Kumar, AC to AG
For Respt. Nos. 3 & 4	:	Mr. Siddhartha Prasad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-08-2025

The petitioner has filed the present petition under

Article-226 of the Constitution of India in which the petitioner



has prayed for setting aside the short term tender notice dated 02.07.2025, bearing PR No. 007741 (Election) 2025-26, issued under the signature of District Election Officer-cum-District Magistrate, Sitamarhi by which, without issuing any notice to the petitioner, the work under agreement dated 20th December, 2023 has been advertised. The petitioner has also prayed that the respondent authorities be directed to continue the agreement dated 20th December, 2023 till its validity, i.e. 19.12.2026. Petitioner has also prayed that the respondent be directed to produce the signed copy of agreement dated 20.10.2023, executed between the petitioner and the respondent authorities.

2. At this stage, it is pertinent to note that after the present petition is filed by petitioner, the concerned respondent issued another short term tender notice dated 18.07.2025 and thereafter very short term tender notice dated 19.07.2025 and, therefore, the petitioner has filed I.A. No. 1/2025 as well as I.A. No. 2/2025 respectively for setting aside the aforesaid tender notices.

Factual Matrix

3. Brief facts leading to filing of the present petition are as under:



3.1. It is the case of the petitioner that notice inviting tender (in short 'NIT') dated 23.08.2023 bearing PR No.007685 (Election) 2023-24 was issued by respondent No. 5 for execution of data entry, scanning, uploading, checklist printing, printing of electoral lists and all other types of work related to electoral list under preparation of photo voter list through ERO-NET, revision/brief revision of electoral list and continuous updating for all eight Vidhan Sabhas of the district of Sitamarhi.

3.2. It is the case of the petitioner that petitioner submitted its bid in the said NIT. Thereafter, petitioner was declared L-1 in the financial bid by the District Purchase Committee. Therefore, on 18.09.2023, direction has been given to Deputy Election Officer, Sitamarhi to enter into an agreement with the petitioner in accordance with the terms and conditions of the tender.

3.3. It is the case of the petitioner that before the petitioner entered into an agreement, work order dated 25.10.2023 came to be issued by Deputy Election Officer, Sitamarhi in favour of the petitioner.

3.4. It is the case of the petitioner that the petitioner was thereafter called in the office of Deputy Election



Officer, Sitamarhi for entering into an agreement. The agreement dated 20th December, 2023 was given to the petitioner which the petitioner signed and thereafter gave it to the Deputy Election Officer, Sitamarhi, however, Deputy Election Officer, Sitamarhi did not sign the said agreement and, in fact, an assurance was given that the agreement will be signed and delivered to the petitioner.

3.5. Petitioner has further stated that, as per Clause-17 of the agreement dated 20th December, 2023, the agreement is valid for a period of three years, i.e. upto 19.12.2026 and could be extended, if required, on finding the work satisfactory, for a year. It is further stated that performance bank guarantee of Rs. 2,00,000/- was also provided on 15.03.2024 which is valid upto 17.03.2027.

3.6. It is further stated that the respondent authority issued work orders in favour of the petitioner from time to time and petitioner also executed the entire work as per the work orders and completion certificates were also issued by the respondent authority.

3.7. Now, it is the grievance of the petitioner that on 02.07.2025, a very short term tender notice came to be issued by the respondent authority for the same work which the



petitioner had been executing in terms of the agreement dated 20th December, 2023. Petitioner has, therefore, preferred the present petition and, as observed hereinabove, after filing the present petition, the said tender notice dated 02.07.2025 was cancelled and, lastly, the respondent issued another very short term tender notice dated 19.07.2025 and, therefore, the petitioner has filed two separate interlocutory applications challenging the subsequent action of the respondent authority.

4. Heard Mr. Ashish Giri, learned senior advocate, assisted by Ms. Riya Giri, Mr. Sumit Kumar Jha and Mr. Pratik Raj, learned advocates for the petitioner, Mr. P.K. Shahi, learned Advocate General, assisted by Mr. Vikas Kumar, learned AC to AG and Mr. Siddhartha Prasad, learned counsel for respondent Nos. 3 & 4.

Submissions on behalf of the parties

5. Learned senior advocate for the petitioner would mainly contend that, as per the NIT, the agreement was executed by the petitioner and the agreement is valid for a period of three years from the date of finalizing the tender by the District Purchase Committee, i.e. upto 19.12.2026. Learned senior advocate would further submit that performance bank guarantee for a period of three years was also accepted, copy of



which is produced as Annexure-P/5 at page 45 of the compilation. It is further submitted that, as per the communication dated 12.07.2024, copy of which is produced at page- 48, the petitioner requested the concerned respondent authority to sign the document and original copy of the same be given to him, however, the respondent authority did not sign the agreement nor the agreement signed by the respondent was supplied to the petitioner. Learned senior counsel further referred the certificate issued by the respondent authority wherein it has been mentioned that the satisfactory work has been performed by the petitioner. Learned senior advocate also referred the work order issued by the respondent authority during the period 2024. Similarly, learned senior counsel has referred page-60 of the compilation, i.e. the work order issued on 01.01.2025. After referring to the aforesaid documents, it has been contended that as the work order was issued to the petitioner on 01.01.2025, it can be said that the respondents, by their conduct, accepted that the agreement is continued at least upto December, 2025. Thus, as on date, the agreement is still subsisting and, therefore, it is not open for the respondent authority to cancel the said agreement unilaterally, without assigning any reason and without giving any notice to the



petitioner. Learned senior counsel has further contended that, looking to the facts and circumstances of the present case, doctrine of estoppel as well as waiver would be applicable and, therefore, the respondents be restrained from proceeding further with the impugned tender notice.

6. In support of his contentions, learned senior counsel has placed reliance upon the following decisions rendered by Hon'ble Supreme Court:-

1. Provash Chandra Dalui & Anr. vs. Biswanath Banerjee & Anr., reported in **1989 Supp (1) SCC 487;**

2. Bharat Sanchar Nigam Limited & Anr. Vs. BPL Mobile Cellular Limited & Ors., reported in **(2008) 13 SCC 597;**

3. Subodh Kumar Singh Rathour Vs. Chief Executive Officer & Ors., reported in **2024 SCC OnLine SC 1682.**

7. After referring to the aforesaid decisions, learned senior counsel would contend that, in the present case, the respondent authority has unilaterally terminated the contract, without assigning any reason and thereafter, without any justification, now fresh tender has been issued by the respondent authority. Thus, the action of the respondent



authority is arbitrary and, therefore, is violative of Article-14 of the Constitution of India. Learned senior counsel, therefore, urged that this Court can interfere with the action of the respondent authority by which now very short term tender notice has been issued for carrying out the work which the petitioner is performing.

8. On the other hand, learned Advocate General has vehemently opposed the present petition. At the outset, learned Advocate General has referred the averments made in the counter affidavit filed on behalf of respondent Nos. 5 and 6. Thereafter, learned Advocate General mainly submits that draft copy of the agreement dated 20th December, 2023 was presented by the petitioner in the office of respondent No. 5 containing Clause Nos. 13 and 17 which stipulate that the agreement is entered into for a period of three years with further stipulation that it would be extended, if required, on finding the work satisfactory, for further one year. However, since the draft agreement was contrary to Clause- 7 of NIT, which stipulates that the work order will be of one year, which may be extended for a further period of one year+ one year, if the performance of the petitioner will be found satisfactory. In fact, the draft agreement was never signed by the competent



authority. Therefore, there is no concluded contract between the parties that the work in question is to be allotted to the petitioner for a period of three years. Learned Advocate General would further contend that the petitioner has failed to produce any document from which it can be said that the agreement is executed for a period of three years. Further, though the petitioner was allowed to work during the year 2024 and thereafter work order was issued on 01.01.2025, but that does not mean that the agreement was executed for a period of three years, as contended by learned senior counsel for the petitioner. In fact, term of contract was not extended in terms of NIT.

9. Learned Advocate General would further submit that bank guarantee having validity of three years was deposited by the petitioner as performance security in view of Clause-7 of NIT as the maximum period for which work was to be allotted was of three years, extendable every year having found the satisfactory performance. Thus, it does not give any leeway to the petitioner to argue that work was allotted to him for three years.

10. Learned Advocate General lastly contended that very short term tender notice dated 02.07.2025 has been



issued by the concerned respondent authority for carrying out the work mentioned in the said notice in all the eight Bihar Legislative Assembly Constituencies of Sitamarhi District. However, thereafter it was cancelled and lastly on 19.07.2025 once again such type of notice has been issued. Last date for submitting the tender has been mentioned as 28.07.2025.

11. Learned Advocate General further submits that in contract/tender matters, the scope of interference while exercising powers under Article-226 of the Constitution of India is very limited. Learned Advocate General has placed reliance upon the recent decision rendered by Hon'ble Supreme Court in the case of **The Principal Chief Conservator of Forest & Ors. Vs. Suresh Mathew & Ors.**, passed in **SLP(C) No(s). 12353-12355 of 2021**. Learned Advocate General, therefore, urged that the present petition be dismissed.

12. At this stage, it is required to be observed that, looking to the urgency shown by the learned senior counsel for the petitioner, the respondents immediately filed the counter affidavit reserving right to file further counter affidavit. We enquired from the learned senior counsel appearing for the petitioner as to whether he wants to file reply to the counter affidavit or not, to which learned senior counsel specifically



informed to this Court that he is not interested in filing reply to the counter affidavit. We have, therefore, proceeded with the matter.

Discussion

13. We have considered the submissions canvassed by learned advocates appearing for the parties. We have also perused the material placed on record. From the record it transpires that the respondent issued NIT on 23.08.2023 for execution of the work mentioned therein. Copy of NIT has been produced at page-26 of the compilation as Annexure-P/1. From the NIT it is revealed that the work order will be of one year which could be extended for a further period of maximum three years, if the performance of the bidder is found satisfactory. Now, learned senior counsel the petitioner has mainly placed reliance upon the agreement dated 20th December, 2023 and, as per the contention taken by the learned senior counsel for the petitioner, the said agreement was entered into for a period of three years, i.e. upto 19.12.2026. It is the further case of the petitioner that during the subsistence of the said agreement now the respondent authority has unilaterally cancelled the same and thereby acted arbitrarily. However, if the averments made by the petitioner in



para-8 of the petition is carefully examined coupled with the agreement, copy of which is placed on record at page-40 of the compilation, it transpires that the said agreement has been signed by the petitioner only and there is no signature of the respondent. It is the specific case of the respondent in the counter affidavit that the petitioner submitted the draft copy of the agreement in the office of respondent No. 5. However, the said draft agreement was contrary to Clause-7 of the NIT and, therefore, the said draft agreement containing stipulation contrary to the terms of N.I.T. was never signed by the competent authority and, in fact, there is no concluded contract between the parties that the work in question was allotted to the petitioner for a period of three years. In fact, even it is the case of the petitioner that the respondent authority did not sign the agreement and, therefore, signed copy of agreement was demanded by the petitioner.

14. It is true that the work order was given by the respondent to the petitioner in the year 2024 and thereafter on 01.01.2025. However, now the respondent authority has thought it fit to issue a very short term tender notice for inviting tender with regard to the work in question. It is the contention of the learned senior counsel for the petitioner that because of



the conduct of the respondent, it can be said that the respondent accepted the terms of the agreement and, therefore, the work order has been given in the year 2025 and, therefore, now the respondent be restrained from issuing fresh tender notice. We are of the view that the aforesaid contention is misconceived. As observed hereinabove, the petitioner has failed to produce any document from which it can be said that the agreement was executed by both the parties for a period of three years.

15. At this stage, we would like to refer the decisions upon which reliance has been placed by the learned advocates appearing for the parties.

16. In the case of **Provash Chandra Dalui** (supra), the Hon'ble Supreme Court has observed in para-14 as under:

“14. It is pertinent to note that the word used is "extension" and not "renewal". To extend means to enlarge, expand, lengthen, prolong to carry out further than its original limit. Extension, according to *Black's Law Dictionary*, means enlargement of the main body addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between "extension" and "renewal" is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulate act. In other words, the word "extension" when used in its proper and usual sense in



connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr A.K. Sen rightly pointed out the schedule specifically mentioned the lease as "for a stipulated period of 20 years". As these words are very clear, there is very little for the court to do about it."

17. In the case of **Subodh Kumar Singh Rathour** (*supra*), the Hon'ble Supreme Court has observed in para Nos. 55, 56, 60, 62, 115, 127 and 128 as under:

"55. Thereafter, this Court in its decision in *M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd.* reported in **(2023) 2 SCC 703** exhaustively delineated the scope of judicial review of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:—

[...](i) Scope of Judicial Review in matters pertaining to Contractual Disputes:—

This Court held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under:—

"53. [...] when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the



mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

ii. The principle laid down in Bareilly Development Authority (supra) that in the case of a non statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.”

(Emphasis supplied)

(ii) Exercise of Writ Jurisdiction in disputes at the stage prior to the Award of Contract:—

An action under a writ will lie even at the stage prior to the award of a contract by the State wherever such award of contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. In doing so, the courts may set-aside the decision which is found to be vitiated for the reasons stated above but cannot substitute the same with its own decision. The relevant observations read as under:—

iv. *An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union*



of India.”

(Emphasis supplied)

(iii) Exercise of Writ Jurisdiction after the Contract comes into Existence:—

This court held that even after the contract comes into existence an action may lie by way of a writ to either **(I)** obviate an arbitrary or unreasonable action on part of the State or **(II)** to call upon it to honour its obligations unless there is a serious or genuine dispute as regards the liability of the State from honouring such obligation. Existence of an alternative remedy or a disputed question of fact may be a ground to not entertain the parties in a writ as long as it is not being used as smokescreen to defeat genuine claims of public law remedy. The relevant observations read as under:—

“v. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

vi. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

vii. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter. Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner; the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed particularly when questions the dispute of fact, surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

viii. The existence of a provision for arbitration, which is a



forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co., by its observations in paragraph-14 in ABL (supra)].

ix. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

x. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

(Emphasis supplied)

(iv) Exercise of Writ Jurisdiction after Termination or Breach of the Contract:—

A relief by way of a writ under Article 226 of the Constitution will also lie against a termination or a breach of a contract, wherever such action is found to either be palpably unauthorized or arbitrary. Before turning away the parties to the remedy of civil suit, the courts must be mindful to see whether such termination or breach was within the contractual domain or whether the State was merely purporting to exercise powers under the contract for any ulterior motive. Any action of the State to cancel or terminate a contract which is beyond the terms agreed thereunder will be amenable to the writ jurisdiction to ascertain if such decision is imbued with arbitrariness or influenced by any extraneous considerations. The relevant observations read as under:—

xi. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention



by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

xii. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard Kumari Shrilekha Vidyarthi v. State of U.P.). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is



completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.”

(Emphasis supplied)

(v) Other relevant considerations for Exercise of Writ Jurisdiction:— Lastly, this Court held that the courts may entertain a contractual dispute under its writ jurisdiction where **(I)** there is any violation of natural justice or **(II)** where doing so would serve the public interest or **(III)** where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that the it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under:—

xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

xv. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh (supra)].”

(Emphasis supplied)

56. What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its instrumentalities. In view of the law laid down by this Court in *>ABL* (supra), *Joshi Technologies* (supra) and in *M.P. Power* (supra), it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its Writ jurisdiction. Where State action is challenged on the



ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the Social Service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations.

60. Now coming to the facts of the case at hand, the appellant has challenged the cancellation of the tender at the instance of the respondent on the ground of being manifestly arbitrary and influenced by extraneous considerations. It is evident from the notice of cancellation dated 07.02.2023, that the tender was not terminated pursuant to any terms of the contract subsisting between the parties, rather, the respondent 'cancelled' the tender saying that there was technical fault in the tender that was floated.

62. Thus, the present dispute even if related to a tender, cannot be termed as a pure contractual dispute, as the dispute involves a public law element. Although there is no discharge of a public function by the respondent towards the appellant yet there is a right to public law action vested in him against the respondent in terms of Article 14 of the Constitution. This is because the exercise of the executive power by it in the contractual domain i.e., the cancelling of the tender carries a corresponding public duty to act in a reasonable and rationale manner. Thus, we find that the writ petition filed by the respondent was maintainable and the relief prayed for could have been considered by the High Court in exercise of its writ jurisdiction.

115. What can be discerned from the above is that this Court has consistently underscored that any decision to terminate a contract must be grounded in a real and palpable public interest, duly supported by cogent materials and circumstances in order to ensure that State actions are fair, transparent, and accountable. Public interest cannot be used as a pretext to arbitrarily terminate contracts and there must be a clear and demonstrable ramification or detriment on the public interest to justify any such action.

127. The sanctity of contracts is a fundamental principle



that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in *Sivanandan C.T. v. High Court of Kerala* reported in **(2024) 3 SCC 799** wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under:—

“18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure

xxx xxx xxx

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.”

(Emphasis supplied)

128. Cancellation of a contract deprives a person of his very valuable rights and is a very drastic step, often due to significant investments having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the



binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest.”

18. We have gone through the aforesaid decisions rendered by Hon’ble Supreme Court. However, we are of the view that the aforesaid decisions would not be applicable to the facts of the present case.

18.1. In the present case, as discussed hereinabove, there is no contract entered into between the parties for a period of three years, as contended by the learned senior counsel for the petitioner. In fact, NIT was only for a period of one year, which can be extended upto a period of three years, if the work is found satisfactory. Merely because the work order was issued on 01.01.2025 in favour of the petitioner, it cannot be said that the respondent is duty bound to give work order to the petitioner for a period of three years, i.e. upto December, 2026. Further, the respondent has taken the performance bank guarantee having validity for a period of three years for the reason that as per Clause-7 of the NIT, the maximum period for which work was to be allotted was three



years, extendable every year, having found the performance of the party satisfactory. Thus, the same cannot give any leeway to the petitioner to argue that the work was allotted to him for a period of three years.

19. At this stage, we would also like to refer the decision rendered by Hon'ble Supreme Court in the case of **Bharat Coking Coal Limited & Ors. Vs. AMR Dev Prabha & Ors.**, reported in **(2020) 16 SCC 759**, in which Hon'ble Supreme Court has observed in para Nos. 19 and 20 as under:

“19. The counsel for the appellant, along with that for C1-India highlighted how the goalpost was being changed by Respondent 1 throughout the litigation. Whereas before the High Court AMR Dev Prabha sought adherence to terms of NIT and strict procedural compliance, but later they wished to settle the matter at a lower price claiming larger public interest. This was claimed to demonstrate how AMR Dev Prabha's interest was, in fact, personal and not public, and only to win the tender one way or the other and not to maintain the sanctity of the auction process. The lack of on-the-spot protest, neither during the auction process, nor at the time of availing refund of the earnest money deposit; and the substantial delay in filing the writ petition (after more than 3 months of close of the auction process and 2 months from issue of the LOA) was nothing but an afterthought aimed at making a commercial opportunity out of litigation. Hence, the present proceedings were claimed to be an



abuse of the process of law by AMR Dev Prabha and only a chance for arm twisting BCCL to award to it the tender, no better than a contractual enforcement of private rights.

20. Instead, it was submitted, that any possible infirmity was merely minor and inconsequential. There had been a substantive compliance of the tender process and the clauses of the notice inviting tender (“NIT”), and public interest of ensuring the lowest price discovery had been kept at the forefront. It was contended that hypertechnical compliance was often not possible, nor desirable as often-a-times strict procedural compliance could defeat the ends of substantive equality, like in the present case.”

20. In the case of **Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) & Ors.**, reported in **(2023) 19 SCC-1**, the Hon’ble Supreme Court has observed in para-50 as under:

“50. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete



with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

21. Keeping in view the aforesaid decisions rendered by Hon'ble Supreme Court, it can be said that the court should exercise a lot of restraint while exercising powers of judicial review in contractual or commercial matters. The Court is normally loathe to interfere in contractual matters, unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. While reviewing the decision making process, the Court should not act as a court of appeal.



Findings

22. Keeping in view the aforesaid decisions, if the facts of the present case, as discussed hereinabove, are once again examined, we are of the view that the decision taken by the respondent authority of issuing a fresh very short term tender notice cannot be termed as ‘arbitrary’ and thereby violative of Article-14 of the Constitution of India, as contended by learned senior counsel for the petitioner. We are of the view that scope of judicial review is very limited and we see no reason to entertain the present petition on the grounds urged by the petitioner.

23. Accordingly, the petition is dismissed.

24. Interlocutory application(s), if any, shall also stand disposed of.

(Vipul M. Pancholi, CJ)

(Partha Sarthy, J)

K.C.Jha/-

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CAV DATE	N.A.
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