

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 3687 of 2025
IA CAN 1 of 2025

Mahnar Infratech Private Limited
Vs.
Union of India & Ors.

For the writ petitioner	:-	Mr. Anirban Roy, Sr. Adv. Mr. Ghanshyam Pandey, Adv. Ms. Sneha Singh, Adv. Ms. Bipasha Jaiswal, Adv.
For respondent nos. 1 to 5	:-	Mr. Raj Kumar Gourisaria, Adv. Mr. Arijit Bakshi, Adv. Mr. Dinobandhu Mukherjee, Adv.
Heard on	:-	21.03.2025
Judgment on	:-	21.03.2025

Amrita Sinha, J.:-

1. Affidavit of service filed in Court today is taken on record.
2. The petitioner was issued a works contract namely "Cover shed in connection with Development of freight maintenance facilities at Adra Yard and Sick Line for maintenance of BCN and other rakes in Adra Division of S.E. Railway".
3. The agreement details annexed to the writ petition mentions that the letter of acceptance of the said contract was dated 28th December, 2023 and date of completion of the work was 28th December, 2024. A formal agreement was executed by and between the petitioner and the authority in the month of May 2024.

4. The contract agreement clearly mentions that the contractor has agreed with the railways for performance of the work set forth in the schedule annexed thereto in terms of the Standard General Conditions of Contract, corrected upto latest correction slips and the Specifications of South Eastern Railway corrected upto latest correction slips and the Schedule of Rates of South Eastern Railway, corrected upto latest correction slips and the Special Conditions and Special Specifications, if any, and in conformity with the drawings hereunto annexed.

5. The contract also mentions that the contractor will perform and complete the work in accordance with the specification and drawings on or before 28th December, 2024.

6. The petitioner is aggrieved as the Railways have terminated the contract and has debarred the petitioner from participation in the tender for executing the balance work and the security deposit by the petitioner has been directed to be forfeited and the performance guarantee has been sought to be encashed.

7. From the documents annexed to the writ petition, it appears that the termination notice dated 10th February, 2025 was issued after giving 48 hours' prior notice. The termination notice also mentions the communication numbers and the dates of the various communications made by and between the parties.

8. The termination letter mentions that 48 hours' notice was given on 18th January, 2025 but no action was taken to commence the work or show adequate progress of the work. As the 48 hours' notice already expired, the subject contract stands rescinded in terms of Clause 62 of the Standard General Conditions of Contract and the balance work under the contract will be carried out independently without the participation of the contractor.

9. Learned advocate appearing on behalf of the petitioner submits that the invocation of bank guarantee is not in terms of the contract. The

authority ought not to have issued debarment order without granting prior opportunity of hearing to the petitioner.

10. It has been submitted that despite best intention of the petitioner to conclude the work within the stipulated time period, the same could not be done as the drawings were not approved by the Railways. Request was made to the Railways praying for approval of the drawings but as the same was not done, the work could not be completed.

11. It has been submitted that the petitioner is still interested to conclude the work provided the drawings are approved and time is allowed to the petitioner.

12. Prayer has been made to set aside the order of termination and the debarment.

13. In support of the submission that the Bank Guarantee cannot be invoked as the same is not in accordance with the terms of the contract reliance has been placed on the judgment delivered of the Hon'ble Supreme Court in the matter of ***Hindustan Construction Co. Ltd. -vs- State of Bihar & Ors. reported in (1999) 8 SCC 436*** wherein the Court held that the invocation has to be in accordance with the terms of the Bank Guarantee, or else, the invocation itself would be bad.

14. It has been submitted that the invocation letter does not specify as to whether the Railways suffered any loss or damage due to the alleged breach by the contractor.

15. Learned advocate appearing on behalf of the respondents opposes the prayer of the petitioner.

16. It has been submitted that enough opportunity was given to the petitioner to conclude the work within the stipulated time period. Not less than ten reminders were issued to the petitioner putting the petitioner on notice for timely conclusion of the work.

17. The agreement of contract of works has been relied upon in support of the submission that the drawings were forwarded to the petitioner along with the said agreement in May 2024.

18. The letter of acceptance was issued on 28th December, 2023 and soon thereafter, the preliminary work ought to have started. The drawings were forwarded in May and the work ought to have been completed by 28th December, 2024.

19. Apart from the communication made by the petitioner on 7th April, 2024 regarding approval of the drawing there is no further communication from the end of the petitioner to suggest that the drawings were not forwarded or they were not approved. On the contrary, the Railways made repeated requests to the petitioner for timely conclusion of the work.

20. It has been submitted that the Railways did not have any other option but to terminate the contract as the time period for conclusion of the contract expired and there was no progress of the work. The Railways have to incur extra expenditure to get the work concluded by floating fresh tender for engagement of a separate contractor. There has been enough delay in the process which has caused loss and damages to the Railways.

21. Prayer has been made to dismiss the writ petition.

22. I have heard and considered the submissions made on behalf of both the parties and perused the materials on record.

23. Admittedly, it appears that the letter of acceptance is dated 28th December, 2023 and the work ought to have been completed by 28th December, 2024. Had there been any difficulty on the part of the petitioner to proceed and complete the work within the stipulated time period, the same ought to have been immediately brought to the notice of the authority.

24. There is hardly any communication expressing difficulty on the part of the petitioner to conclude the work in the absence of the approval of the

drawing. A solitary communication has been annexed to show that the drawing was not approved. The response of the Railways has not been annexed.

25. The letter of termination mentions about ten communications made by the Railways to the petitioner to conclude the work. As there is no evidence on record, it can be presumed that there was no communication from the end of the petitioner. The authority is required to get the work concluded by engaging a separate contractor and the same is bound to result in additional expenditure of the Railways resulting in loss and damages of the authority.

26. According to the General Conditions of Contract, the authority has the right to rescind the contract if the same is not concluded in the manner as specified. The petitioner has failed to deliver the work in terms of the contract. The authority has proceeded to terminate the contract and forfeit the security deposit and encash the Bank Guarantee. The Court does not find any error with the same.

27. As regards debarment of the petitioner, it appears that prior opportunity of hearing was not provided. As debarment will entail civil consequences, the authority ought to provide an opportunity of hearing to the petitioner.

28. The ratio laid down by the Hon'ble Supreme Court in the matter of Hindustan Construction Co. Ltd. (supra) is a time tested one. The Court has held that the invocation has to be in terms of the Bank Guarantee. The Bank Guarantee is annexed to the writ petition which mentions that the Bank hereby undertakes to pay the amount on demand from the Government stating that the amount claimed is due by way of loss of damage caused or would be caused or suffered by the Government by reason of breach by the contractor's failure to perform the agreement.

29. In the case at hand, there is enough evidence in support of the loss and damage caused to the Government because of breach on the part of the petitioner to conclude the work in a time bound manner. The moment the Railways float further tender for engagement of a separate contractor, the cost of the work and the time period spend to conclude the work will increase resulting in loss and damage to the Railways. It does not appear that the invocation is bad, as alleged.

30. In view of the above, the prayer of the petitioner seeking set aside of the termination notice cannot be allowed.

31. The Railways, however, is directed to grant an opportunity of hearing to the petitioner to implement the order of debarment of the petitioner for participation in the tender for executing the balance work.

32. The writ petition stands dismissed.

33. The connected application is disposed of.

34. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)