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WP(MD)No.7340 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.7340 of 2025

and

WMP(MD)Nos.5541, 5543 and 5545 of 2025

ALR Constructions,
Rep.by its Managing Director,
A.Logirajan S/o.Angathevar

... Petitioner

Vs.

1.The Superintending Engineer,
O/o.The Superintending Engineer,
National Highways (Circle),
Besant Road, Chinnachokkikulam,
Madurai.

2.The Divisional Engineer,
O/o.The Divisional Engineer,
National Highways,
Dindigul.

3.The Regional Officer,
National Highways Authority of India,
Regional Office, Lake Area Road,
Near Maatuthavani,
Madurai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order of the first respondent in Notice No. 383/EPC/NH383/AP/2018-19/AE-1 dated 06.03.2025 and quash the same.



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For Petitioner : Mr.B.Saravanan, Senior Counsel
for Mr.S.Ramsundarvijayraj

For Respondents : Mr.Ajmal Khan,
Additional Advocate General
assisted by Mr.B.Ramanathan,
Additional Government Pleader
for R1 & R2

Mr.K.Govindarajan,
Deputy Solicitor General of India
assisted by P.Karthick for R3

ORDER

The Superintending Engineer, National Highways (Circle), Madurai on behalf of Ministry of Road Transport and Highways of India called for tender for carrying out the works of strengthening the road from (i) 2 lane to 2 land with paved shoulder from Km 0/550-1/100,5/700-21/070,21/500-34/200 & 34/870-38/000 & (ii) strengthening of existing 4 lane from Km 0/000-0/550,1/100-1/780,2/420-5/700,21/070-21/500,34/200-34/870 & 2 lane from Km 1/780-2/420 (Dindigul – Natham Section) of NH 383 in the State of Tamil Nadu (Job No.NH 383-TN-2017-18-857). The petitioner was the successful tenderer. Agreement was entered into in this regard between the petitioner and the first respondent on 14.08.2018. The project was completed on 30.06.2022. As per the terms of the



contract, the petitioner was obliged to maintain the project for a period of four years ie., up to 30.06.2026. The road was to become tollable road with effect from 07.10.2024. A road to become a tollable road must fulfil certain requirements. The stand of the NHAI is that the road in question did not meet those standards. Taking note of the stand of NHAI, the first respondent issued the impugned termination notice dated 06.03.2025 terminating the maintenance agreement. Challenging the same, this writ petition has been filed.

2.An interim order of stay was also granted. The stand of the petitioner is that the Highways Department carried out an independent inspection and their report is in favor of the writ petitioner. In writ proceedings, such factual controversies cannot be adjudicated. The only question that calls for consideration is whether the impugned termination notice can be quashed on the ground that it was not preceded by any notice setting out the intention of the department to terminate the agreement. The learned Senior Counsel appearing for the petitioner draws my attention to Clause 23.1.2 of the agreement dated 14.08.2018. It reads as follows :



“Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon-occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor;

provided that before issuing the Termination Notice, the Authority shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.”

I wanted to know whether the impugned termination notice was preceded by any earlier notice as envisaged by the said clause. The learned Additional Advocate General appearing for the first and second respondents submitted that the impugned notice was not issued under Clause 23.1.2 but under Clause 23.3. Clause 23.3 reads as under :

“23.3. Termination for Authority's convenience

Notwithstanding anything stated hereinabove, the Authority may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.”



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3. Though the terms of a contract cannot be interpreted like a statutory provision, I have to necessarily go by the express language set out in the contract. Clause 23.3 opens with a non-obstante clause. In fact, it does not envisage any issuance of prior notice. However, to protect the the rights of the contract when termination is made under the said clause, it has been provided that it would take effect thirty days thereafter. The impugned notice was issued on 06.03.2025. It was to take effect from 07.04.2025. The final paragraph of the impugned order reads as follows :

“Hence, as per Clause 23.3 of agreement, hereby, it has been decided to terminate the contract for the convenience of the authority and it is also informed that the termination of the agreement will have effect from 07.04.2025”

4. I am not in a position to accept the stand of the learned Senior Counsel that the impugned notice has to be quashed for not adhering to the procedure laid down in Clause 23.1.2 of the agreement. The termination notice issued by the first respondent is sustained. It is also seen that during the intervening period, the parties entered into an



tripartite agreement on 17.06.2025. It has been signed by the first respondent, the Regional Officer of NHAI as well as the contractor. But as pointed out by the learned Deputy Solicitor General of India, in view of the endorsement of the protest made by the contractor at the foot of the tripartite agreement, it cannot be said to be an agreement at all. Be that as it may, the respondents 1 and 2 undertake before this Court that they would immediately hand over the entire stretch of the road in question along with the Toll Plaza to National Highways and the NHAI can take over the same.

5.The learned Additional Advocate General drew my attention to Paragraphs 28 to 31 of the counter affidavit filed by the respondents 1 and 2 which catalogues the maintenance obligations of the contractor. On the other hand, the learned Senior Counsel for the petitioner draws my attention to Clause 23.6.2 of the agreement dated 14.08.2018. It reads as follows :

“23.6.2 Upon Termination on account of an Authority Default under Clause 23.2 or for Authority's convenience under Clause 23.3, the Authority shall :

(a) return the Performance Security and Retention Money forthwith;



(b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and

(c) pay to the Contractor, by way of Termination Payment, an amount equal to:

(i) Valuation of Unpaid Works;

(ii) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;

(iii) the reasonable cost of temporary works, as determined by the Authority's Engineer; and

(iv) 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source."

6. In the case on hand, the termination was for authorities' convenience under clause 23.3. Therefore, the provisions set out in Clause 23.6.2 will definitely kick in and the working out of the aforesaid clause is a matter between the contractor and the first respondent and that would be outside the scope of the present writ proceedings.

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7.This writ petition is disposed of with the observations mentioned above. No costs. Connected miscellaneous petitions are closed.

19.11.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

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Note : Issue order copy on 20.11.2025

To:

- 1.The Superintending Engineer,
O/o.The Superintending Engineer,
National Highways (Circle),
Besant Road, Chinnachokkikulam,
Madurai.
- 2.The Divisional Engineer,
O/o.The Divisional Engineer,
National Highways,
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- 3.The Regional Officer,
National Highways Authority of India,
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G.R.SWAMINATHAN,J.

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