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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13666/2022 and CM APPL.41658/2022

M/S SMAT FORMS

.....Petitioner

Through: None.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vikram Jetly, CGSC alongwith
Ms. Shreya Jetly, Advocates for R1
and R2.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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15.04.2025

1. The present petition assails an order dated 18.07.2022, whereby, the respondent no.2/National Mission for Clean Ganga, Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Sakti, Government of India terminated the contract dated 10.06.2022 and forfeited the performance security of Rs.65,000/- submitted by the petitioner.
2. The aforesaid contract was awarded to the petitioner on 01.06.2022 by the respondent no.2 through the portal of respondent no.3/Government E-Marketplace (GeM), for a period of two year for designing, printing and delivery of monthly editions of magazine known as 'Namami Gange Patrika' circulated by respondent no.2. In terms of the stipulated terms and conditions of the aforesaid contract, on 15.06.2022, the petitioner submitted Rs. 65,000/- as performance security.
3. On the premise that the petitioner breached the contract, the



respondent no.2 terminated the aforesaid contract *vide* impugned order dated 18.07.2022. The impugned order reads as under:

“Sub; Termination of the contract no. GEMC-511687740558599 dated 1st June 2022.

Dear Sir,

I am directed to communicate that with reference to the contract no GEMC-511687740558599 dated 1st June 2022 ("Contract") entered into between M/s Smat Forms and National Mission for Clean Ganga (NMCG) under the Contract, for designing, printing and delivery of Namami Gange Patrika for a period of two years, shall stand terminated with immediate effect.

2. That, in accordance with the terms of the Contract, you were required to design and print the monthly editions of Namami Gange Patrika (27th edition in this instance), however you were not able to provide satisfactory designs of the magazine till date despite the content for the magazine was provided to you on 10.06.2022.

3. That, you were notified via email three times to remedy the issue on 20.06.2022, 29.06.2022 & 01.07.2022 As per the contract conditions, the breach was to be resolved within 14 days of notification, i.e. by 05.07.2022.

4. That, since no satisfactory response is obtained from your side till date, the Contract shall stand terminated with immediate effect and you shall be no longer to perform any services under the Agreement.

5. Therefore, in consideration of terms of the contract, further as per conditions of Contract, on account of your non-satisfactory performance for designing, printing and delivery of Namami Gange Patrika, the performance security deposited by you shall stand forfeited.

This issues with the approval of competent authority.”

4. Pursuant to the issuance of impugned order, the petitioner *vide* an email/communication dated 19.07.2022 sought for a personal hearing from respondent no.2 against the impugned action. The said communication reads as under:

*“
The Director*

Date : 19-07-2022



*National Mission of Clean Ganga
Department of Water Resources,
River Development & Ganga Rejuvenation
1st Floor, Major Dhyanchand National Stadium
New Delhi – 110002*

*Subject : Termination of Contract for Printing and Supply of Namami
Ganga Patrika*

Sir,

We have received your termination letter of the contract of printing of magazine. This decision is one sided and arbitrary.

- 1. From the very first day you have demanded the designer at your office premises which was never been mentioned in your bid anytime.*
- 2. Your team was quite happy with the designs we have provided, and we have made corrections as suggested time by time.*
- 3. We have also sent you mails regarding but no communication from your side.*
- 4. We have sent mail of corrections required on 5th July and dropped a reminder on 14th July, but no response received so far.*
- 5. It seems that one of your members in team is forcing us to deploy a particular designer of his choice which eventually could not happened & without calling us such things being poisoned at back*
- 6. You have never issued any final show cause notice regarding this. And we are under impression that proof checking at your end is taking time & this has come to us surprise today.*

It is therefore this termination of contract is not acceptable and department should give us a fair chance as we have put a lot of efforts in this. Please hear us & hold this termination.

Yours truly,

For SMAT Forms

Sd/-

Prop.”

5. Thereafter, the petitioner sent a follow-up communication dated



22.07.2022 to the respondent no.2 for personal hearing. The said communication reads as under:

“

Date : 22-07-2022

*The Director
National Mission of Clean Ganga
Department of Water Resources,
River Development & Ganga Rejuvenation
1st Floor, Major Dhyanchand National Stadium
New Delhi – 110002*

*Subject : Termination of GeM Contract No. GEMC-511687740558599
dated 1st June 2022 for Printing and Supply of Namami Ganga Patrika*

Dear Sir

This Termination of the contract is unjustified, illegal, unlawful & arbitrary without any hearing or issue of any show cause notice prior to termination & forfeit of the performance security which is totally unjustified, illegal, Unlawful & arbitrary and must be revoked immediately. We did not make any sort of infringement in terms and conditions of the contract, hence can't be accepted at all.

We are trying to reach you on call as well as in person and, found that not only every one of you including Sh. Binod Kumar ji and Sh. Najeeb ji has deliberately ignore to hear us or meet us but also gave standing instructions at reception downstairs regarding not to entertain us / attend call. This act of department seems to be quite personal as well as self-motivated.

You are also denying accepting our written submissions against your cancellation / termination, when our manager Sh. Surjeet has visited personally, even in the dak.

It is therefore, once again requested to fix a time to make us understand what's your actual grudge is and where we have not considered any of the terms and conditions, failing which we shall have to take remedies to save our dignity and money both.

Best Regards

For SMAT Forms

Sd/-

Prop.”



6. Subsequently, vide email dated 25.07.2022, the respondent fixed a meeting on 26.07.2022 at their office with the petitioner and thereafter, on 03.08.2022, the respondent issued a detailed reply to the objections raised by the petitioner in letter/communication dated 19.06.2022 against the impugned order. The response dated 03.08.2022 reads as under:

*“Ministry of Jal Shakti, Government of India
Department of Water Resources, River Development and Ganga
Rejuvenation
National Mission for Clean Ganga*

*1st Floor,
Major Dhyan Chand National Stadium
New Delhi-110002*

Dated: 3rd August, 2022

*M/s Smat Forms
3588, G. T. Road, Old Sabji Mandi, Delhi – 110007
Mob : 09350230618
Email ID : smatforms@gmail.com*

*Sub: Termination of the contract no. GEMC-511687740558599 dated 1st
June 2022*

I am directed to inform vide contract no GEMC-511687740558599 dated June 2022 ("Contract") entered into between M/s Smat Forms and National Mission for Clean Ganga (NMCG) under the Contract, for designing, printing and delivery of Namami Gange Patrika for a period of two years, which has been terminated with immediate effect.

2. The termination of your contract was communicated to you vide letter dated 19th July, 2022. M/s Smat Forms reverted vide letter dated 1st July 2022. Please find below the response of National Mission for Clean Ganga (NMCG) regarding your letter dated 19th July 2022:

<i>Letter from M/s Smat Forms</i>	<i>Response from NMCG</i>
<i>1. From the very first day you have demanded the designer at your office premises which was never been mentioned in your bid anytime.</i>	<i>Denied: It was not demanded that the designer be present at the NMCG office all the time. It was explained succinctly that a proper designer is required to be available and draft shown to NMCG team for the purpose of</i>



	<i>making corrections/amendments. Namami Gange Magazine is a Government of India publication and it is to be ensured that the final draft has no mistakes.</i>
<i>2. Your team was quite happy with the designs we have provided, and we have made corrections as suggested time by time.</i>	<i>Denied: The Editorial Board was not happy with the overall designing of the magazine and the drafts shared after corrections were also not up to the mark and could not be accepted. This led to inordinate delay in bringing out the edition.</i>
<i>3. We have also sent you mails regarding but no communication from your side.</i>	<i>NMCG communicated via emails dated 20th June, 29th June and 30th June, 2022 elucidating the concerns.</i>
<i>4. We have sent mail of corrections required on 5th July and dropped a reminder on 14th July, but no response received so far.</i>	<i>The draft shared was not good enough and still needed a lot of work amidst ambiguous and non-cooperative responses from the vendor causing a lot of delay in finalization of the draft.</i>
<i>5. It seems that one of your members in team is forcing us to deploy a particular designer of his choice which eventually could not happen & without calling us such things being poisoned at back.</i>	<i>Denied and Fictitious</i>
<i>6. You have never issued any final show cause notice regarding this. And we are under impression that proof checking at your ending is taking time & this has come to us surprise today.</i>	<i>The frequent ambiguous responses from your side had resulted in delay of the 27th edition of Namami Gange magazine. NMCG communicated via emails dated 20th June, 29th June and 30th June, 2022 elucidating the concerns.</i>

3. This issues with the approval of competent authority.

*Binod Kumar
Director, NMCG.”*

7. In the above background, the present petition has been filed on the premise that the impugned order was issued by the respondent no.2 without



any show-cause notice and without granting any personal hearing to the petitioner. Thus, the petitioner through the present petition seeks to set aside the impugned order with a direction to the respondent to restore/continue with the contract (dated 01.06.2022) which was cancelled *vide* the impugned order.

8. It is noticed that *vide* order dated 21.09.2022, the petitioner sought some time to file an additional affidavit to bring on record the material in support of its contentions that the respondents were responsible for delay in submission of final printed magazine. Pursuant thereto, an additional affidavit has been filed on behalf of the petitioner.

9. Learned standing counsel for the respondents points out that the emails/communications enclosed with the said additional affidavit (Annexure P-8) corroborates the rationale for taking termination action against the petitioner. In particular, attention is drawn to an email dated 01.07.2022 which sets out the various short-comings in the work performed by the petitioner. It is submitted that no remedial action was taken by the petitioner despite numerous requests and as a result of which, the concerned respondents were constrained to take the impugned action.

10. It is further emphasised that the disputes between the parties are contractual in nature and cannot be agitated under Article 226 of the Constitution of India.

11. The Supreme Court in ***M.P. Power Management Company Ltd., Jabalpur vs Sky Power Southeast Solar India Pvt. Ltd and Ors.***, 2023 2 SCC 703 laid down the power and scope of a court under Article 226 of the Constitution of India in adjudicating contractual dispute/s, and has observed as under:



“75. We would, therefore, sum up as to when an act is to be treated as arbitrary. The Court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision under the Wednesbury doctrine would qualify as an arbitrary decision under Article 14. Ordinarily visiting a party with the consequences of its breach under a contract may not be an arbitrary decision.

76. We may now notice the judgment of this Court in *Joshi Technologies International Inc. v. Union of India* [*Joshi Technologies International Inc. v. Union of India*, (2015) 7 SCC 728] , which is also relied upon by the learned Additional Solicitor General. The said case actually involved the complaint of the writ petitioner therein that it was entitled to the benefit of Section 42 of the Income Tax Act, 1961 which provided for certain deductions. The petitioner had entered into an agreement with the respondent, the Government of India. The case of the respondent, inter alia, was one denying the case of the petitioner that the omission of Section 42 was by oversight. The prayer in the writ petition itself inter alia was essentially to declare entitlement to the deduction under Section 42, inter alia.

77. It is while dealing with the said case that this Court no doubt proceeds to, inter alia, lay down as following after adverting to ABL [*ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553] also: (*Joshi Technologies case* [*Joshi Technologies International Inc. v. Union of India*, (2015) 7 SCC 728], SCC pp. 766-68, paras 69-70)

“69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under



the following circumstances, “normally”, the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.



70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so : and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia



of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.”

78. In State of Kerala v. M.K. Jose [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] , the specific question with which we are concerned with, namely, entertaining a writ petition in a contractual matter and where the specific question was the validity of the termination of the contract, fell for consideration. We may notice the following : (SCC p. 441, para 13)

“13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.”

79. Thereafter, the Court in M.K. Jose [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] went on to consider in detail the judgment of this Court in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and found that it was a case where the Court granted relief as the facts were absolutely clear from the documentary evidence and it pertained to interpretation of such clauses of the contract of insurance. We need notice only para 20 in M.K. Jose [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] . It reads as under : (M.K. Jose case [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] , SCC p. 446, para 20)



“20. We have referred to the aforesaid authorities to highlight under what circumstances in respect of contractual claim or challenge to violation of contract can be entertained by a writ court. It depends upon facts of each case. The issue that had arisen in *ABL International [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]* was that an instrumentality of a State was placing a different construction on the clauses of the contract of insurance and the insured was interpreting the contract differently. The Court thought it apt merely because something is disputed by the insurer, it should not enter into the realm of disputed questions of fact. In fact, there was no disputed question of fact, but it required interpretation of the terms of the contract of insurance. Similarly, if the materials that come on record from which it is clearly evincible, the writ court may exercise the power of judicial review but, a pregnant one, in the case at hand, the High Court has appointed a Commission to collect the evidence, accepted the same without calling for objections from the respondent and quashed [*M.K. Jose v. State of Kerala, 2014 SCC OnLine Ker 28346*] the order of termination of contract.”

(emphasis supplied)

80. In *State of U.P. v. Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847]*, the first respondent the successful tenderer had worked the contract for a year when he was visited with cancellation. This Court exhaustively referred to the earlier case law including *ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]* and *Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728]* and held, inter alia, as follows : (*Sudhir Kumar Singh case [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847]*, SCC para 26)

“26. It may be added that every case in which a citizen/person knocks at the doors of the writ court for breach of his or its fundamental rights is a matter which contains a “public law element”, as opposed to a case which is concerned only with breach of contract and damages flowing therefrom. Whenever a plea of breach of natural justice is made against the State, the said plea, if found sustainable, sounds in constitutional law as arbitrary State action, which attracts the provisions of Article 14 of the Constitution of India — see *Nawabkhan Abbaskhan v. State of Gujarat [Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121 : 1974 SCC (Cri) 467]*, SCC para 7. The present case is, therefore, a case which involves a “public law element” in that the petitioner (Respondent 1 before us) who knocked at the doors of the writ court alleged breach of



the audi alteram partem rule, as the entire proceedings leading to cancellation of the tender, together with the cancellation itself, were done on an ex parte appraisal of the facts behind his back.”

81. *We have already concluded that PPA is not a statutory contract. However, that would not be the end of enquiry. Dr A.M. Singhvi, learned Senior Counsel, would point out that the contract, not being a statutory contract, assumes relevance only for the purpose of deciding as to whether the Court should relegate the writ applicant, to alternate remedies. In other words, while the Court would retain its discretion to entertain the petition or decline to do so, in the facts of each case, there is no absolute taboo against the Court granting relief, even if the challenge to the termination of a contract is made in the case of a contract, which is not statutory in nature, 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.*

82. *We may cull out our conclusions in regard to the points, which we have framed:*

82.1. *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.*

82.2. *The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] 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 [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] , may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment*



in *Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847]* .

82.3. *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.*

82.4. *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 *Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]*). 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 [Tata Cellular v. Union of India, (1994) 6 SCC 651]* .*

82.5. *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.*

82.6. *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.*

82.7. *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 questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.*

82.8. *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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22] , by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]].

82.9. *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.*

82.10. *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.*

82.11. *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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , 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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]* . 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.

82.12. 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 *Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]*). 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.

82.13. 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.

82.14. 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.



82.15. 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 [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847]).

12. A perusal of the impugned order brings out that cogent rationale has been provided for taking the impugned action. It is also noticed that upon receiving petitioner's representations dated 19.07.2022 and 22.07.2022 against the impugned order, the respondent no.2 granted a personal hearing to the petitioner on 26.07.2022, and addressed the objections raised in the said representations *vide* letter dated 03.08.2022.

13. An intricate inquiry into the factual basis for issuing the impugned action, is beyond the scope of these proceedings under Article 226 of the Constitution of India. The same would involve adjudging upon disputed questions of fact, which would require an elaborate evidentiary process, for which the present proceedings are not appropriate.

14. As such, in terms of the dicta laid down by the Supreme Court in aforesaid judgment in ***M.P. Power Management Company Ltd.*** (supra), the parties must be relegated to their civil/contractual remedies.

15. Reference is also apposite to the view taken by the Division Bench of this Court in ***MEP Infrastructure Developers Ltd. vs South Delhi Municipal Corporation and Ors***, 2023 SCC OnLine Del 2088, by relying upon ***M.P. Power Management Company Ltd., Jabalpur*** (supra). The relevant portion of the said judgment reads as under:

“38. In view of the foregoing, this Court is of the opinion that the view taken by the learned Single Judge not to entertain the writ petition under Article 226 of the Constitution of India does not require any interference, more so in view of the assertions and rebuttal of both the parties. The dispute between the parties cannot be adjudicated only on the basis of affidavits. The issues raised can be adjudicated only by leading evidence before an



appropriate forum and a writ court is not the appropriate forum for the same.

39. It is well settled that 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 at 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, the 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 questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit. The Apex Court in M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703 has addressed this aspect as under:

“82.7. 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 questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.”

16. Considering the aforesaid circumstances and considering that there is no appearance on behalf of the petitioner (today and also on the previous date of hearing), the present petition is dismissed-in-default for non-prosecution.

17. Pending application also stands disposed of.

SACHIN DATTA, J

APRIL 15, 2025/at/sl