IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 19401 of 2026

M/s Vishnu Prakash R. Punglia Limited.

Vs.

Union of India & Ors.

Mr. Jishnu Choudhury, Sr. Adv.
Mr. Joyjeev Medhi
Mr. Deep Basak
Mr. Subodh Asthana

....For the petitioner.

Mr. Rajarshi Dutta
Mr. Prasun Mukherjee
Mr. Deepak Agarwal

....For the respondent nos. 2 to 9.

Hearing Concluded On : 28.09.2026

Judgment Delivered On : 07.10.2026

Judgment Uploaded On : 07.10.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition challenging the impugned letters dated 7th March, 2026; 28th April, 2026 and 26th June, 2026 as well as any other decision taken or order passed by the respondents pursuant to the impugned letters including the consequential email dated 23rd July, 2026, seeking recovery of Rs. 6,95,147/-.

2. The Central Procurement Cell of the Bharat Heavy Electricals Limited, being the respondent no. 3 has issued the Notice Inviting Bids (hereinafter referred to as "NIB") on 16th December, 2024 in respect of Civil, Structural & Architectural works of entire Power Block Area (T-Yard to FGD up to Chimney Raft) Power House, Boiler, ESP, Mill & Bunker, TG, BFP, Fan Foundations, FGD, TG, CEP, CW pit, ESP Control Room, Chimney Raft, ID Ducts, Paving Works, Transformer Yard, CST Pump House, Compressor, DG, MRS, AC & Ventilation Ducting Labour Hutment for 1000 workers including land leasing, Rooftop Solar System foundation (Within power block area), Sewage water line (Within BTG area), Civil work for LP piping & Fire Fighting (Within BTG area), Pipe rack/cable rack (Within BTG area), CW Duct Buried (Civil work within powerhouse area), Worker's Rest Room etc. at 1X800 MW NTPC Sipat Project..

3. The petitioner has participated in the bid process and on 5th February, 2025, the respondent no. 2, Bharat Heavy Electricals Limited

(hereinafter referred to as “BHEL”) has issued Letter of Award (hereinafter referred to as “LOA”) in favour of the petitioner for execution of Civil, Structural & Architectural works of entire Power Block Area (T-Yard to FGD up to Chimney Raft) Power House, Boiler, ESP, Mill & Bunker, TG, BFP, Fan Foundations, FGD, TG, CEP, CW pit, ESP Control Room, Chimney Raft, ID Ducts, Paving Works, Transformer Yard, CST Pump House, Compressor, DG, MRS, AC & Ventilation Ducting, Labour Hutment for 1000 workers including land leasing, Rooftop Solar System foundation, Sewage water line, Civil work for LP piping & Fire Fighting, Pipe rack/cable rack, CW Duct Buried, Worker's Rest Room etc. at the 1x800 MW NTPC Sipat Project (hereinafter referred to as "Project").

After issuance of Letter of Award in favour of the petitioner, a Contract Agreement was also executed between the parties on 18th March, 2025.

4. The respondent no. 6 has issued a Contractual Notice dated 29th June, 2026 to the petitioner informing the petitioner that the petitioner failed to comply with the contractual obligations and directed the petitioner to rectify/improve the job execution and to complete the relevant targets within 14 days from the issuance of letter failing which the BHEL may exercise its right to terminate the contract on the ground of breach of contract. The petitioner has submitted a detailed reply dated 11th February, 2026, explaining that the delays alleged therein were substantially and directly attributable to the respondents default,

including non–availability of work fronts, piecemeal release of drawings, delayed engineering approvals, pendency of blasting permission and hard rock conditions and non-release RA Bills.

5. Mr. Jishnu Choudhury, Learned Senior Advocate, representing the petitioner submits that without considering reply submitted by the petitioner, without affording any opportunity of hearing and any prior notice, the respondent no. 6 has issued the first impugned order dated 7th March, 2026, invoking Clause 2.7.1 of the GCC proceeded ahead for descoping the works like Excavation of works at CCR–MPH and balance civil works of PA, FD Fan and ID Duct Foundation and get it done through suitable alternatives in the line of the contractual provisions. It was also informed that all obligations towards payments and other statutory compliances related to manpower deployment through alternative sources shall be the responsibility of the petitioner and the petitioner shall not be entitled for any compensation due to descope of work.

6. Mr. Choudhury submits that the impugned letter was issued barely six (6) weeks into the scheduled excavation period and ten (10) months before the contractual completion milestone when no delay or default arose. The petitioner has submitted detailed reply to the notice dated 7th March, 2026 but inspite of considering reply, the respondents have issued second notice dated 28th April, 2026, informing the petitioner that the Civil Architectural Works of the Transformer Yard valued of Rs. 1,40,53,229/- was withdrawn under Clause 2.7.2 of the GCC with the

reservation of right to recover differential cost plus 5% overheads through alternative agencies and Civil and Architectural Works of underground CW Pipe Encasing along A-Row, valued at approximately Rs. 1,41,43,284/- was withdrawn under Clause 2.7.1 of the GCC, without recovery, but reserving execution through alternative agencies.

7. The respondent no.7 has issued a notice dated 8th June, 2026 to the petitioner on the allegation of poor progress of work and the respondent no. 6 has issued notice dated 17th June, 2026 by granting 7 days' time to improve the work failing which the respondents threatened the petitioner to terminate the contract on the ground of breach of contract. On 26th June, 2026, the respondents have withdrawn further scope of work of the petitioner under Clause 2.7.2 of the GCC with respect to TG Deck and its associated works, Foundation of MPH and CCR building and final lift of all balance 8 no. Mills and all Fan Foundations valued at approximately Rs. 9,97,59,037/- with the reservation of the right to recover differential cost plus an additional 5% overheads through engagement of alternate agencies.

8. Mr. Choudhury submits that the petitioner again submitted detailed reply to the respondents on 27th June, 2026 but the respondent authorities have not considered the same. He submits that the contract includes liquidated damages and other remedies in case of breach of contract outlined in Clauses 2.7.2.1 to 2.7.2.2 of the GCC but the respondent no.3 proceeded with cancelling the work order without adhering to the required 14 days' notice period, which is deemed

violation of the GCC. He submits that by an email dated 23rd July, 2026, the respondents sought to recover an amount of Rs. 6,95,147/- towards the alleged differential cost of the partially withdrawn work at the petitioner's risk and cost.

9. Mr. Choudhury submits that despite having initiated a re-tendering process of the said works, the respondents abandoned the same and instead awarded the work to a third party agency on a rate contract basis without any contractual or legal justification.

10. Mr. Rajarshi Dutta, Learned Advocate, representing the respondents submits that on 5th February, 2025, Letter of Award (LOA) was issued to the petitioner. The contract price for the subject work is 247,55,00,000/-. Time to complete the said work is 28 months from the date of start of the work.

11. Mr. Dutta submits that as per Clause 2.9 of the General Conditions of Contract, execution plan, progress monitoring, monthly review and performance evaluation in Form-14 is to be maintained to ascertain the monthly progress of work awarded to the petitioner. He submits that after considering the monthly progress of the work of the petitioner, the respondents have time to time directed the petitioner to expedite the work but inspite of direction of the respondents, the petitioner has not expedited the works awarded which appears in the performance evaluation form.

12. Mr. Dutta submits that the respondents have issued notices to the petitioner intimating that if the petitioner will expedite the work as per time provided by the respondents, the respondent will take appropriate steps in accordance with Clause 2.7.1 but the petitioner failed to do so and accordingly, the respondents have descope the part work order awarded to the petitioner.

13. Mr. Dutta has relied upon Section 20A of the Specific Relief Act, 1963 (hereinafter referred to as "Act of 1963") and submits that the work awarded to the petitioner is infrastructure project and there is a bar under the said provision for grant of interim order. He further relied upon Sub–Section (ha) of Section 41 of the Specific Relief Act, 1963 and submits that as per Schedule Entry-2 of the Act, the work order is of Power House which is coming under "Energy".

14. In support of his submissions, Mr. Dutta has relied upon the judgment in the case of ***N.G. Projects Limited Vs. Vinod Kumar Jain and Others*** reported in ***(2022) 6 SCC 127*** and submits that the Hon'ble Supreme Court held that the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project.

15. Mr. Dutta has relied upon the judgment in the case of ***State of Uttar Pradesh and Others Vs. Sandeep Kumar Balmiki and Others***

reported in ***(2009) 17 SCC 555*** and submits that staying the order of termination could not be passed at the interim stage and if such relief is granted, it amounts to allow the writ petition without permitting the parties to place their respective cases at the time of final hearing of the writ petition.

16. Mr. Dutta has relied upon the judgment in the case of ***State of Kerala Vs. M.K. Jose*** reported in ***(2015) 9 SCC 433*** and submits that the writ court should ordinarily not entrained a writ petition, if there is a breach of contract involving disputed questions of fact.

17. Mr. Dutta has handed over the communication made by the petitioner to the respondents dated 9th July, 2026 wherein the petitioner requested the respondents for exit permission for scaffolding materials inside the plant premises as the said materials were mobilized for the execution of the TG Deck and its associated works but the said work has been withdrawn.

18. Mr. Dutta further relied upon the email dated 25th July, 2026 wherein the petitioner has informed the respondents that substantial portion of the contract work has been withdrawn due to which construction materials, equipment and temporary works has become surplus to the requirements of remaining scope of work and repeatedly requested for permission for removal of such materials and now after the period of two months, the petitioner has filed the present writ petition. He further submits that once the petitioner has admitted the descoping

work, the petitioner cannot be permitted to challenge the said descoping work.

19. Mr. Dutta has filed documents and submits that the work in question is an infrastructure project and the authority cannot wait such long time and thus the respondents have published a tender notice on 20th January, 2026 with the broad scope of job of framework agreement (Rate Contract) for execution of balance civil, structure and architecture works at various project sites of BHEL across India. The said tender was awarded to one M/s Anand Kumar Singhania. The descoping of works of the petitioner was also awarded to the M/s Anand Kumar Singhania by way of Letter of Award dated 4th May, 2026 and 26th June, 2026. The petitioner had the knowledge of the Letter of Award issued to third party but the petitioner has not made the said firm as party to the present writ petition, thus the writ petition suffers from non-joinder of parties. In support of his submission, the petitioner has relied upon the judgment in the case of ***U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*** reported in ***(2006) 11 SCC 464*** and submits that the petitioner has admitted the descoping order and requested to exit its materials which was brought for execution of the said work and the petitioner also has the knowledge about the awarding of contract to the third party but the said LOA is not challenged and the said firm has not made party to the present writ petition.

20. Scope of the tender work is as follows:

> *"**1. <u>SCOPE OF WORK</u>**:*
>
> *Civil, Structural & Architectural works of entire Power Block Area (T-Yard to FGD up to Chimney Raft) Power House, Boiler, ESP, Mill & Bunker, TG, BFP, Fan Foundations, FGD, TG, CEP, CW pit, ESP Control Room, Chimney Raft, ID Ducts, Paving Works, Transformer Yard, CST Pump House, Compressor, DG, MRS, AC & Ventilation Ducting, Labour Hutment for 1000 workers including land leasing, Rooftop Solar System foundation (Within power block area), Sewage water line (Within BTG area), Civil work for LP piping & Fire Fighting (Within BTG area), Pipe rack/cable rack (Within BTG area), CW Duct Buried (Civil work within powerhouse area), Worker's Rest Room etc. at 1x800 MW NTPC Sipat Project, as detailed in Chapter-II of Technical Conditions of Contract (TCC) of tender and associated corrigenda."*

21. The petitioner has disclosed the reply submitted by the petitioner to the respondents dated 7th July, 2025 and 10th July, 2025 with reference to several letters of the respondents but the petitioner has not disclosed the letters received by the petitioner from the respondents. The reply submitted by the petitioner reveals that the petitioner tried to satisfy the respondents that the petitioner is putting its best efforts to achieve the progress to complete the project in given time.

22. The respondents have issued a letter dated 12th July, 2025 to the petitioner by referring several reference numbers of the letters issued by BHEL to the petitioner and in the said letter, the BHEL has given actual status of the project work awarded to the petitioner. By the said letter, the respondents have categorically informed the petitioner that if the petitioner fails to meet the contractual commitments despite giving

repeated timelines, the respondents will take appropriate action against the petitioner in terms of the General Conditions of Contract.

23. Clause 2.7 provides the Rights of BHEL which reads as follows:

> ***"2.7 RIGHTS OF BHEL***
>
> *BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the contractor for any compensation.*
>
> ***27.1*** *To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to fulfill BHEL's commitment to its customer or the date of completion is advance due to other emergent reasons/ BHEL'S obligation to its customer.*
>
> *Where the contractor fails to deploy adequate manpower to meet the contractual target, BHEL reserves the right to deploy manpower to meet such shortfall, through any other agency for expediting activities in the interest of the project. Supplied manpower shall be put on job by the contractor. Fulfilling of all obligations towards payments and other statutory compliances related to manpower shall be the contractor's responsibility. In case of contractor's failure to fulfill his obligations in respect of such manpower, BHEL shall be entitled to take action as provided herein."*

24. Breach of Contract, Remedies and Termination provided under Clause 2.7.2 which reads as follows:

> ***"2.7.2 Breach of Contract, Remedies and Termination***
>
> ***2.7.2.1*** *The following shall amount to breach of contract:*
>
> *I. Non-supply of material/ non-completion of work by the Supplier/Vendor within scheduled*

delivery/ completion period as per contract or as extended from time to time.

II. The Supplier/Vendor fails to perform as per the activity schedule and there are sufficient reasons even before expiry of the delivery/ completion period to justify that supplies shall be inordinately delayed beyond contractual delivery/ completion period.

III. The Supplier/Vendor delivers equipment/ material not of the contracted quality.

IV. The Supplier/Vendor fails to replace the defective equipment/ material/ component as per guarantee clause.

V. Withdrawal from or abandonment of the work by the Supplier/Vendor before completion as per contract

VI. Assignment, transfer, subletting of Contract by the Supplier/Vendor without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.

VII. Non-compliance to any contractual condition or any other default attributable to Supplier/ Vendor.

VIII. Any other reason(s) attributable to Vendor towards failure of performance of contract. In case of breach of contract, BHEL shall have the right to terminate the Purchase Order/ Contract either in whole or in part thereof without any compensation to the Supplier/Vendor.

IX. Any of the declarations furnished by the contractor at the time of bidding and/or entering into the contract for supply are found untruthful and such declarations were of a nature that could have resulted in non-award contract to the contractor or could expose BHEL and/or Owner to adverse consequences, financial or otherwise.

X. Supplier/Vendor is convicted of any offence involving corrupt business practices, antinational activities or any such offence that compromises the business ethics of BHEL, in violation of the

Integrity Pact entered into with BHEL has the potential to harm the overall business of BHEL/ Owner.

Note

i. *Once BHEL considers that a breach of contract has occurred on the part of Supplier/ Vendor, BHEL shall notify the Supplier/ Vendor by way of notice in this regard. Contractor shall be given an opportunity to rectify the reasons causing the breach of contract within a period of 14 days.*

ii. *In case the contractor fails to remedy the breach, as mentioned in the notice, to the satisfaction of BHEL, BHEL shall have the right to take recourse to any of the remedial actions available to it under the relevant provisions of contract.*

LD against delay in executed work in case of Termination of Contract:

LD against delay in executed work shall be calculated in line with LD clause no. 2.7.9 of GCC, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.

Method for calculation of "LD against delay in executed work in case of termination of contract" is given below.

i). Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to contractor = T1

ii). Let the value of executed work till the time of termination of contract= X

iii). Let the Total Executable Value of work for which inputs/fronts were made available to contractor and were planned for execution till termination of contract = Y

iv). Delay in executed work attributable to contractor i.e. T2=[1-(X/ Y)] x T1

v). LD shall be calculated in line with LD clause (clause 2.7.9) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor.

2.7.2.2. [***].”

25. On 29th January, 2026, the respondents have issued notice to the petitioner informing the petitioner that the petitioner failed to comply with the contractual obligations and has committed breach of contract. The respondents have given an opportunity to the petitioner to rectify and improve the job execution and complete/ achieve the relevant target within 14 days from the date of receipt of the notice failing which the BHEL will exercise its rights to terminate the contract on the ground of breach of contract. In the notice, the BHEL has also annexed the details of the work which the petitioner was required to complete but the petitioner failed to comply with the same and accordingly, the respondents have issued the impugned order dated 7th March, 2026 by descoping the critical works like Excavation works at CCR-MPH and balance work of PA, FD Fan and ID duct foundation and decided to get the said work done through the suitable alternatives in terms of the contractual provisions. Similarly by an order dated 28th April, 2026 and on 26th June, 2026, further part works have been descoped.

26. Clause 2.9 of the GCC provides for Execution Plan, Progress Monitoring, Monthly Review and Performance Evaluation, which reads as follows:

> ***"2.9 EXECUTION PLAN, PROGRESS MONITORING, MONTHLY REVIEW AND PERFORMANCE EVALUATION***
>
> ***2.9.1*** *A tentative plan/ programme for completion of the contractual scope of work as per the time schedule given in the contract shall be made jointly by BHEL and Contractor, before commencement of work. The above programme shall be supported by month wise deployment of resources viz Manpower, T&P, Consumables, etc. Progress will be reviewed periodically (Daily/Weekly/Monthly) vis-à-vis this jointly agreed programme.*
>
> *Subsequently, every month, quarterly rolling plan will be made by BHEL based on budgeted targets.*
>
> *Monthly plan in F-14 format shall be drawn from this Quarterly plan. Monthly plan shall necessarily include activities required for achieving targets/ milestones unless inputs/ fronts are not available. While planning and arriving on asking rate all available inputs shall be taken into consideration.*
>
> *Vendor will be required to execute the monthly plan in that month in addition to make full efforts to minimize the cumulative shortfall attributable to him up to the month.*
>
> *BHEL may require monthly work plan up to one and half times of average monthly value and demand matching manpower.*
>
> *Where, Average Monthly Value Total Contract Value (as per latest revision)/ Period of Contract (in months)*
>
> *Provided, this requirement is reflected in the rolling quarterly plan two months in advance.*
>
> *If the Contractor refuses to sign the F-14 format, those F-14 formats requiring Contractor's signature shall be deemed to have been signed and accepted*

by the Contractor, if communicated to the Contractor through email or any other mode as stated in clause 2.3.1.

The Contractor shall submit periodical progress reports (Daily/ Weekly/ Monthly) and other reports/ information including manpower, consumables, T&P mobilization etc. as desired by BHEL.

2.9.2 *Monthly progress review between BHEL and Contractor shall be based on the agreed programme as above, availability of inputs/fronts etc., and constraints if any, as per prescribed formats (i.e. Form F-14). Manpower, T&P and consumable reports as per prescribed formats shall be submitted by contractor every month. Release of RA Bills shall be contingent upon certification by BHEL Site Engineer of the availability of the above prescribed formats duly filled in and signed*

2.9.3 *The burden of proof that the causes leading to any shortfall is not due to any reasons attributable to the contractor is on the contractor himself. The monthly progress review shall record shortfalls attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL*

2.9.4 *Performance of the Contractor shall be assessed as per prescribed formats and shall form the basis for Assessment of Capacity of Bidder for Tenders where the Contractor is a bidder. BHEL reserves the right to revise the evaluation formats during the course of execution of the works."*

27. The petitioner has disclosed charts / table with respect to monthly plan and review in compliance with Clause 2.9 of the GCC wherein it reveals that cumulative shortfall attributable to the contractor and the petitioner has not raised any objection to the said monthly plan. On receipt of the impugned orders, the petitioner by a letter dated 9th July, 2026, requested the respondents for permission for scaffolding materials inside plant premises. In the said letter, the petitioner has

categorically stated that as the partial scope of work has been withdrawn, the scaffolding materials are no longer required at the site and the petitioner requested to grant exit permission to take out its materials out from the work site. Subsequent to the letter date 9th July, 2026, the petitioner has again sent an email to the respondents requesting for necessary approval, gate passes and all requisite clearances for immediate removal of surplus materials and equipment from the project site.

28. The petitioner in one hand accepted the descoping order and is ready and willing to take out its materials out from the work site and on the other hand, the petitioner has filed the present writ petition. The petitioner has also admitted in the writ petition that the respondents have awarded the work to a third party on a rate contract basis without any contractual or legal justification but the petitioner has neither made the third party as respondent in the present writ petition nor the said work order issued to the third party is challenged. The respondents during hearing of the case, have produced two work orders issued in favour of the third party with respect to the work which is descoped from the work awarded to the petitioner but even after receipt of the work order issued in favour of the third party, the petitioner has not taken any steps to challenge the same.

29. This Court finds that after issuance of orders of descoping, the petitioner has accepted the said orders and requested the respondents to grant permission to take out its materials from the project site. The

respondents have also issued work orders of descoping work to M/s Anand Kumar Singhania. The petitioner has not challenged the said orders and also not made M/s Anand Kumar Singhania as party to the present writ petition inspite of having knowledge that the descoping work of the petitioner is awarded to the third party.

30. Considering the above, this Court did not find any illegality in the impugned orders and the order does not require any interference. **WPA No. 19401 of 2026** is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)