

14.05.2026
Court No. 12
Item 03
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 1816 of 2025
IA No : CAN 1 of 2025
In
W.P.A. 15166 of 2025

Jekay International Track Private Limited & Anr.
-Versus-
Union of India & Ors.

Mr. Sakya Sen, Sr. Adv.,
Mr. Sankarsan Sarkar,
Mr. Ritoban Sarkar,
Mr. Anshunath Chakraborty,
Mr. Aniruddha Saha Roy
.....for the appellants
Ms. Susmita Saha Dutta
....for the respondents

- 1) The appellants are aggrieved by the judgment and order dated August 28, 2025, passed by the learned single Judge in W.P.A. 15166 of 2025.
- 2) The learned single Judge dismissed the writ petition on the ground that the action of the respondent authorities were neither arbitrary nor illegal, and did not require interference by a writ Court in exercise of power of judicial review.
- 3) Her Lordship was of the view that, in cases relating to termination of contract by State, the controversy fell within the domain of contractual relationship and the writ Court should refrain from entering into such arena.

4) Mere allegation of breach of the contractual terms could not be sufficient to entertain the writ petition. The action of the respondent authorities should be demonstrably unreasonable.

5) Her Lordship further held that, the relief claimed by the petitioner, could not be allowed without appreciating the evidence. Whether the penal provision was rightly invoked or whether the petitioner would be entitled to get back the elastic railway clips, could not also be decided by the writ Court without weighing the evidence.

6) Mr. Sen, learned senior advocate appearing for the appellants submits that the order impugned suffers from serious irregularities. First and foremost, Her Lordship did not take into account the fact that the contractual relationship between the parties prohibited any unilateral action on the part of the railways to recover penalty, without there being a full-fledged adjudication of the breach allegedly committed by the appellants, in not supplying the goods as per the specification of the railways. Secondly, the quantification of the amount imposed as penalty was not supported either by any calculation or the terms of the contract. Thirdly, after expiry of the guarantee period, the penalty had been imposed. The issue with regard to supply of inferior quality materials was not raised within 30 months from the last date of supply, which expired on July 18, 2024.

7) Ms. Susmita Saha Dutta, learned advocate for the Railway authorities submits that joint inspection was arranged. Inspection by the

RDSO was also conducted. The appellants failed to participate in such inspection. The contract permitted deduction of penalty and also recovery of the same from any other on-going contract of the appellants. According to the report which was concluded after the test being done by the RDSO, six samples from each lot numbers 38,39,43 were found to be unsatisfactory and not in accordance with the specification. This was communicated to the appellants by a letter dated August 02, 2024. The appellants were requested to replace the defective lots as per the guarantee clause mentioned in the purchase order. Several reminders were sent to the appellants to replace the materials. Thereafter, the appellants were de-listed for a period of one year from the list of eligible suppliers of the railways. An equivalent amount of the price of the failed lot which came to Rs. 1,74,54,940/- was claimed from the appellants. It appears that the appellants failed to pay. The appellants also replaced some of the materials. The railway authorities recovered Rs. 65,08,597/- and the dues at the time of adjudication of the writ petition was Rs. 47,96,773/-.

8) We have heard the parties at length and perused the relevant documents. Although the learned Judge held that the issues involved in the writ petition required appreciation of evidence, we find from the notice which was challenged in the writ petition that, the amount of Rs. 1,74,54,940/- was sought to be recovered as penalty although, the amount was actually the price of the goods which were supplied by the appellants.

9) The penalty clause which we find from a cursory perusal of the relevant document, does not indicate that the quantum of penalty would be equivalent to the price of the goods which were found to be defective. Under such circumstances and in view of the fact that we, prima facie, find that the quantification of the amount of penalty is contrary to the clause incorporated in the contract, we stay further recovery of the penal amount as proposed by the railway authorities for a period of 4 months. We are of the view that a dispute has arisen between the parties as the claim of the respondents and the notice of recovery have been challenged by the supplier.

10) Under such circumstances, we dispose of the appeal upon modification of the order of Her Lordship, leaving it open to the appellants to approach the appropriate forum as per arbitration clause, by invoking the same. Further interim protection shall be available to the appellants before the learned Arbitrator, after expiry of the period as indicated hereinabove.

11) Our observations are only prima facie. We are not inclined to go into the factual disputes raised. All issues are left open to be decided by the learned Arbitrator. The amount already recovered from the appellants shall be kept in a separate interest bearing account, by the railways, till further order of the learned Arbitrator.

12) Accordingly, the appeal and the connected application are disposed of.

13) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)