Item No.8
25.11.2026
Court. No. 12
GB/Sandip

MAT 1809 of 2026
With
CAN 1 of 2026
With
CAN 2 of 2026

M/s. Vishnu Prakash R. Punglia Limited
Vs.
The Union of India & Ors.

Mr. Jishnu Chowdhury, Sr. Adv.,
Mr. Joyjeev Medhi,
Mr. Subodh Asthana,
Ms. Rupsa Sreemani,
Mr. Sushil Daga,
Mr. Deep Basak

... for the Appellant.

Ms. Rini Bhattacharyya

... for the U.O.I.

Mr. Sabyasachi Chowdhury, Sr. Adv.,
Mr. Rajarshi Dutta,
Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

... for the B.H.E.L.

1. The appeal arises out of a judgment and order dated September 28, 2026, passed in WPA 19401 of 2026. By the order impugned, the learned Single Judge dismissed the writ petition on the ground that, after having accepted the decision of the tendering authority to descope the contract and after willingly taking away the materials from the work site, the appellant had lost the right to challenge the decision of the tendering authority in descoping the work, awarding the balance work to a third party contractor and proposing to take further steps on the basis of the impugned communications. His Lordship also recorded that the writ petition was bad for non-joinder of the agency which was subsequently hired by the respondent authorities to execute the balance work.

2. Mr. Jishnu Chowdhury, learned senior advocate appearing on behalf of the appellant submits that the learned Single Judge failed to take into consideration the fact that the general conditions of contract (in short GCC) did not provide a risk purchase clause. None of the clauses in the GCC permitted the tendering authority to recover the cost of execution of the balance work (descoped work) by any other contractor, from the bills of the appellant.

3. To substantiate his contentions, Mr. Chowdhury has drawn out attention to Clauses 2.7, 2.7.1 and 2.7.2.2 of the GCC. According to Mr. Chowdhury, Clause 2.7.1 permitted the authority to withdraw any portion of the work or restrict or alter the quantum of the work indicated in the contract, during the progress of the work and get it done by any other agency. However, the said clause did not permit the tendering authority to recover the cost of execution of the work by any other agency in case of such alteration or restriction of the work initially allotted to the appellant. With regard to the second part of the said clause, it was further submitted that only upon deployment of manpower in case of shortfall, the tendering authority could deploy its own resources and recover the cost of such deployment. The right of recovery of any money/differential cost or any sum for that matter was not provided in the GCC. Money was not recoverable from the contractor in case of alteration in the scope of work or reduction of the same. BHEL was only entitled to impose liquidated damages in the event of a breach

of contract on account of delay in the execution of the work. Clause 2.7.2.1 provided for the same.

4. He further contends that Clause 2.7.2.2 dealt with remedies in case of breach of contract and such remedies would be available in the event the contract was terminated. Upon termination of the contract, BHEL was entitled to recover an amount equivalent to 10% of the contract value for the damages on account of breach of contract committed by the contractor and the amount was to be recovered by encashing any security instrument like the performance guarantee etc. In the event such security instrument was insufficient, there were other modes and methods of recovery of the same as provided under Sub-Clauses (iii), (iv) and (v) of Clause 2.7.2.2. Thus, Mr. Chowdhury submits that descoping is one of the remedies provided for in case of breach of contract and not vice versa.

5. The other contention of Mr. Chowdhury is that the descoping and the recovery proposed to be made by the letters impugned before the learned Single Judge were arbitrary, mala fide and was a pre-meditated action in order to favour the agency subsequently hired to execute the work that was descoped. He alleges that the other contractor engaged by the tendering authority was a favoured child of the said authority and only to favour the said agency, the action of descoping had been taken. He referred to the relevant dates and the values of the contract which had been published on January 20, 2026 in respect of completion of the descoped work. According to Mr. Chowdhury, the

tendering authority was not supposed to know that the work would be descoped and the balance work would be required to be completed by a third party even before the appellant was put on notice to remedy the wrong.

6. Mr. Sabyasachi Chowdhury, learned senior advocate appearing for the tendering authority submits that the broad scope of the job as described in the notice inviting e-tender in respect of which the appellant was the successful tenderer and that contained in the notice inviting e-tender in which the third party agency was the successful bidder, were different. The scope of the work in the second notice inviting e-tender was to engage an agency for completion of balance work throughout India in all projects of BHEL.

7. According to Mr. Chowdhury, such was a normal practice being followed by BHEL all over India in order to maintain continuity in the work as also the timelines.

8. The learned Single Judge had dismissed the writ petition on the ground of waiver. On the arguments advanced by Mr. Jishnu Chowdhury we find that, upon a conjoint reading of the various clauses of contract, we prima facie find that the right of recovery and the differential cost may be covered under clause 2.7.3. Secondly, the allegation that the tendering authority acted with mala fide intention and in a premediated manner in order to allot the work to a favoured agency does not appear to be established. It is evident from the notice inviting e-tender, that the scope of the work to be completed by the third party agency, who was engaged on the basis of the notice inviting e-tender dated

January 20, 2026, was execution of the balance civil structure and architecture work at various project sites of BHEL across India. Whereas, the scope of the work of the appellant was as follows :-

> *"Civil, Structural & Architectural works for entire Power Block Area (T-Yard to FGD)- Power House, Boiler, ESP, Mill & Bunker, TG, BFP, Fan Foundations, FGD, CEP, CW pit, ESP Control Room, Chimney Raft, ID Ducts, Paving Works, T-Yard, CST Pump House, Compressor, DG, MRS, AC & Ventilation Ducting, Labour Hutment for 1000 workers including land leasing, Rest Rooms for O&M Workers/SHED FOR*
>
> *CONSTRUCTION WORKERS AND O & M WORKERS, 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 power house area), Worker's Rest Room, Road works etc. –* ***excluding Supply of Cement, Reinforcement Steel (TMT) and structure Steel which shall be issued by BHEL, free of cost****."*

9. With regard to issue of waiver, we are of the view that waiver or acquiescence is a matter which has to be decided from the conduct of the appellant. Such decision is to be based on evidence. Thus, the observations of His Lordship while dismissing the writ petition will not prejudice any further proceeding that may be initiated by the appellant before the appropriate forum.

10. In view of our aforesaid observations, we hold that the writ petition was not maintainable in the first place. The issues which have been decided by His Lordship and by us shall be treated to be, prima facie, but shall not affect any other proceedings that may be initiated by the appellant. We have made our above observations only to hold that the issues which have been raised by the appellant cannot be decided in a writ proceeding.

11. The interim order passed in this proceeding is vacated.

12. The writ petition would have been maintainable had the appellant been able to demonstrate from the records that the action of the tendering authority was ex facie illegal, arbitrary and contrary to the covenants of the contract or the GCC. On a conjoint reading of the terms and conditions of the GCC, we do not find that the appellant has been able to demonstrate such situation exists, would call for any interference by us.

13. Accordingly, the appeal and the connected application are disposed of.

14. In the event, the appellant chooses to avail of any other remedy before the appropriate forum, the appellant shall be at liberty to do so, in accordance with law.

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

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)