

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

APO/80/2025

WITH

WPO/509/2025

PHO COM NET PVT LTD AND ANR

VS

THE OFFICE OF THE CHIEF ELECTORAL OFFICER

GOVERNMENT OF WEST BENGAL

BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

For Appellant : Mr. Anirban Ray, Sr. Adv.

Mr. Sourav Ray, Adv.

Mr. V.V.V. Sastry, Adv.

For the Respondent : Mr. S.N. Mookherjee, Sr. Adv.

Mr. Suddhasatva Banerjee, Adv.

Mr. Anuran Samanta, Adv.

Mr. Suryaneel Das, Adv.

Mr. Dhruv Chadha, Adv.

Judgment on : 20.04.2026

Arijit Banerjee, J. :-

1. This appeal is directed against a judgement and order dated July 15, 2025, passed by a learned Judge of this Court whereby the Appellants' writ petition being WPO 509 of 2025 was dismissed.

2. The material facts of the case relevant for the present purpose are that an E-Tender dated January 17, 2024, was floated by the office of the Chief Electoral Officer, West Bengal (in short “the respondent”), for selection of reputed companies, agencies and organisations to provide Webcasting solution and live monitoring of poll-related activities in connection with the Lok Sabha election which was scheduled to be held between April 17, 2024 and June 1, 2024, in the State of West Bengal.

3. The appellant company (in short “the appellant”) submitted its bid and emerged as the successful tenderer. A work order dated April 13, 2024, was issued in favor of the appellant. The total contract value was Rs. 25,90,00,000. Subsequently, an agreement was entered into by and between the appellant and the respondent for the period April 17, 2024, to June 1, 2024.

4. Earnest Money Deposit (in short “EMD”) was paid in terms of the tender documents. Security equivalent to 10 per cent of the bid value was also furnished by the appellant in the form of irrevocable and unconditional Performance Bank Guarantees in favor of the respondent. Two Bank Guarantees dated April 4, 2024 and April 10, 2024, for the sums of Rs 1,91,00,000/- and Rs 68,00,000/- respectively, were furnished.

Appellant’s submission

5. The appellant says that the entire work was successfully completed by it under the supervision of the District Election Officers (DEOs). The deliverables including technical support throughout the contract period, were provided by the appellant.

6. After successful completion of the work, the appellant received certificates issued and endorsed by the DEOs from the 23 districts involved.

7. By a letter dated May 4, 2024, the appellant requested the respondent to expedite the process of refund of the EMD.

8. The respondent sought clarifications through multiple letters in connection with the Webcasting services provided by the appellant during the Lok Sabha Election 2024. The appellant duly responded to such letters which the respondent acknowledged. Thereafter, no queries / disputes were ever raised by the respondent.

9. The appellant says that in the above factual background, it submitted its tax invoices to the respondent for the contract value enclosing thereto the completion certificates duly issued and endorsed by the DEOs of the concerned 23 districts.

10. Through several letters dated September 13, 2024, October 21, 2024, and October 28, 2024, the appellant requested the respondent to refund the EMD and release the bank guarantees on an early date.

11. By a communication dated December 30, 2024, the appellant was informed that the contract price for a sum of Rs. 26,45,96,612/- was being released subject to deduction of tax and deduction of a sum of Rs. 93,80,556/- as per recommendation of the IT Steering Committee. The appellant received the payment in its designated bank account on January 2, 2025.

12. The appellant says that the document dated December 30, 2024, was issued by the Government of West Bengal after consideration of all alleged failures and / or delays on the part of the appellant and after making deduction from the bills in that connection. In other words, all complaints against the appellant culminated in the final deduction from its bills as indicated in the document dated December 30, 2024.

13. It is contended that, the contract in question, therefore, stood discharged by performance to the satisfaction of the respondent. The appellant received the agreed payments but the respondent failed to release the security amount. Letters dated January 16, 2025, April 28, 2025, May 14, 2025 and May 31, 2025, were written by the appellant calling upon the respondent to release the EMD and the

bank guarantees, but in vain. Such action of the State is vexed with mala fide and is unfair and unbecoming of a State agency. The State is attempting to enrich itself unjustly at the cost of the appellant by not refunding the EMD and/or by invoking the performance bank guarantees.

14. A notice dated July 7, 2025, was received by the appellant whereby the respondent threatened to forfeit the EMD, invoke the bank guarantees, and impose appropriate penalties, including blacklisting, on the appellant.

15. Challenging the notice dated July 7, 2025, the appellant filed the instant writ petition. Apart from praying that the said notice be quashed, a prayer was also made for directing the respondent to refund the EMD of Rs. 10.00,000/- and released the bank guarantees dated April 9, 2024, and April 10, 2024, for the sums of Rs. 1.91 crore and Rs. 68 lakh respectively.

16. Learned Single Judge dismissed the writ petition. Hence this appeal at the instance of the writ petitioners.

17. Before the learned Single Judge as also before us, the appellant argued as follows:-

(a) Clause 3.21 of the EOI and Clause 2.16 of the contract between the parties provide that payment will be made as mentioned in terms of the agreement and will be paid on receipt of the bill on the basis of satisfactory completion of the work within the given time frame duly certified by the District Election Officers.

(b) Upon issuance of completion certificates by all the 23 District Election Officers, processing of the invoices submitted by the appellant, deduction of an amount of Rs. 93,80,556/- from the bill amount as per recommendation of the IT Steering Committee and payment of the contract value, the contract stood fully discharged by performance. The respondent, having accepted performance and having released payment,

cannot subsequently reopen a concluded contract without establishing a legally sustainable breach.

(c) Clause 3.22 in the EOI (Security Deposit) as well as Clause 2.17 of the subject contract provide that “in case of failure to execute the work as per terms and conditions of the NIT/Work order, the security deposit will be forfeited. Security deposit will also be forfeited in case the selected agency fails to enter into agreement or refuses to work even after work is offered on the basis of technical and financial evaluation criterion as per provisions of the tender.”

(d) None of the above contingencies are attracted in this case. The appellant successfully executed the work in terms of the NIT/Work Order, duly certified by the competent authorities. Payment was released after deduction of a sum of Rs. 93,80,556/- purportedly on account of alleged failures and shortcomings on the part of the appellant. Eight months after releasing payment, the appellant is further penalized by sudden invocation of the bank guarantees in the total sum of Rs. 2.59 Crore. This is a case of the appellant suffering irretrievable injustice calling for interference by the Court.

(e) The entire action of the respondent is without jurisdiction, the forfeiture of EMD and invocation of the bank guarantees is also without jurisdiction.

(f) The issuance of the show-cause notice dated July 7, 2025, discloses a closed mind of the respondent. The notice smacks of pre-judgment. It is obvious that issuance of the said notice is merely a pretence to try and give legality to a decision already taken.

(g) The action of the respondent in issuing the show-cause notice dated July 7, 2025, is arbitrary, whimsical, unreasonable and in violation of

the principles of natural justice. The arbitration clause in the contract between the parties does not bar the invocation of the writ jurisdiction.

(h) The respondent has sought to approbate and reprobate. Having accepted performance, certified completion, deducted sums and released payment, the respondent thereafter cannot mechanically invoke the bank guarantees without quantifying loss or establishing breach. Such conduct fails the fairness test under Article 14 of the Constitution.

(i) Existence of an alternative remedy is not a bar to the maintainability of a writ petition. Further, the arbitration clause in this case would not be an alternative efficacious remedy since the present action of the respondent is riddled with unfairness and mala fide intent. Hence, relegation to the alternative forum of Arbitral Tribunal would not and cannot be an efficacious remedy for the appellant.

(j) The learned Judge wrongly held that there are disputed questions of fact in this case. All controversies, if any, ended with the Government of West Bengal issuing the document dated December 30, 2024. The Government already deducted the sum of approximately Rs. 93 lakh from the bills of the appellant. Having done so and having paid the balance contract value to the appellant, the respondent cannot now reopen the entire case by issuing the notice dated July 7, 2025. This is a classic case, where, after completion and acceptance of the works, allegations are being made pertaining to incidents prior to completion certificates and memos for releasing payment being issued. The learned Single Judge failed to appreciate the true import of the judgments relied upon by the appellant.

18. Learned Advocate for the appellant relied on the following decisions: -

(i) M/S. Techno Prints v. Chhattisgarh Textbook Corporation & Anr. reported at (2025) 3 S.C.R. 208 : 2025 INSC 236.

(ii) Siemens Ltd v. State of Maharashtra & Ors. reported at (2006) 12 SCC 33.

(iii) M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Ltd. & Ors., reported at (2023) 2 SCC 703.

(iv) Subodh Kumar Singh Rathour v. Chief Executive Officer & Ors. reported at (2024) 15 SCC 461.

(v) Union of India and Anr. v. Vicco Laboratories, reported at (2007) 13 SCC 270.

(vi) Unitech Limited & Ors. v. Telangana State Industrial Infrastructure Corporation (TSIC) & Ors., reported at (2021) 16 SCC 35.

(vii) M.S. Sanjay v. Indian Bank & Ors., reported at 2025 INSC 177.

(viii) Gujarat Maritime Board v. Larsen & Toubro Infrastructure Development Projects Ltd. & Anr., reported at (2016) 10 SCC 46.

19. Appearing for the respondent, Mr. Mookherjee, learned Senior Advocate, submitted as follows: -

(i) The order impugned was passed by the learned Single Judge in exercise of discretion. The appellant has not demonstrated that such exercise of discretion was arbitrary or unreasonable or perverse in any manner.

(ii) In any event, a Court should not interfere with the issuance of a show cause notice.

(iii) In the present case, the show cause notice dated July 7, 2025, has not yet been replied to by the appellant. The respondent has not made

up its mind as regards the liability of the appellant. The writ petition is premature.

(iv) By issuance of the show cause notice, no right of the appellant has been affected.

(v) The writ petition is not maintainable. Apart from the fact that a contractual dispute is generally not entertained by a writ Court, the present case involves disputed questions of fact for the adjudication of which the writ Court is not an appropriate forum.

(vi) In the instant case, the conduct of the appellant is to be examined by the respondent which can only be done after it submits its response to the show cause notice.

(vii) The decision in the case of ***M/S. Techno Prints, (supra)*** is of no assistance to the appellant since the said decision was rendered in the peculiar facts of that case. The factual matrix in that case expanded over a period of 8 months and the authority had issued 5 notices prior to issuance of the show cause notice. The case concerned fulfilment of a contract during the COVID period. The authority in that case gave up its case of deliberate violation of tender conditions by the private party. Relief was granted in that case as the Court came to a finding that the decision of the respondent authority was a foregone conclusion.

(viii) The decision in the case of ***Siemens Ltd., (supra)*** also does not advance the case of the appellant. In that case, the affidavit filed by the respondent authority made it clear that the authority had made up its mind and only thereafter had issued the show cause notice with a closed mind. Hence relief was granted.

(ix) No order of injunction can be passed restraining invocation of a bank guarantee by the Writ Court. In this connection reliance was placed on

the decision of the Hon'ble Supreme Court in the case of ***Gujarat Maritime Board v. Larsen and Toubro Infrastructure Development Projects Ltd. & Anr., reported at (2016) 10 SCC 46. Para 9.***

(x) The ends of justice would be served by allowing the appellant to submit its reply to the show cause notice. The respondent will take its decision after providing a hearing to the appellant. Should the respondent decide to take action against the appellant after considering the response and submissions of the appellant, while encashment of earnest money deposit/ bank guarantees will be immediate, decision to black list the appellant, if at all taken, will be kept in abeyance for a period of 2 weeks.

20. The learned Single Judge, after noting the submissions made on behalf of the respective parties, dismissed the writ petition with the following observations: -

“16. The impugned notice requesting the petitioners to show sufficient reasons indicates many factual issues for which clarification has been sought for from the petitioners. It is only after response is given to the said notice that the authority will arrive at a conclusion whether to forfeit the EMD and the bank guarantee and whether to impose any penalty or not. As on date no decision has been taken by the authority imposing any penalty or taking coercive step against the petitioners.

17. The dispute in question, admittedly, arises out of a contract entered by and between the parties. Whether the authority could have issued a notice to show reasons prior to taking any punitive action against the petitioners is a matter to be decided upon interpretation of the terms and conditions of the contract.

18. The Hon'ble Supreme Court in ***Vicco Laboratories (supra)***, inter alia, laid down that normally, the writ Court should not interfere at the

stage of issuance of show cause notice. Interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that the notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication is necessary, interference is ruled out. The Court also held that where show cause notice is issued either without jurisdiction or in an abuse of process of law, the Writ Court would not hesitate to interfere at the stage of issuance of show cause notice.

19. In the instant case it does not appear that the authority acted without jurisdiction. No case alleging abuse of the process of law has been made out. The respondent authority is one of the parties to the contract. The bank guarantee in favour of the respondent authority is still active, and the respondent authority being the beneficiary may take step to invoke and encash the same in accordance with law.

20. The petitioners assert that the action of the authority is arbitrary. The aforesaid submission of the petitioners cannot be accepted by the Court. Prima facie it does not appear that the authority acted arbitrarily. Whether the authority could have acted in the manner in which it has acted is required to be adjudicated by the competent forum which is certainly not the Writ Court.

21. In ***Unitech Limited (supra)*** the Court reiterated that writs are maintainable for asserting contractual rights against the State or its instrumentalities. It was also held that presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases and it needs to be decided from case to case as to whether recourse to a public law

remedy can justifiably be invoked. The Court held that the State and its instrumentalities are not exempt to act fairly.

22. To decide as to whether the action of the authority is fair or not, various factual aspects are required to be verified. There are several disputed questions of facts and for adjudication of the same evidence may also be required to be taken. Such factual aspects cannot be conclusively decided by the Writ Court.

23. In ***Indian Oil Corporation. Ltd. and Ors v. Saumajit Roy Chowdhury reported at 2025 SCC OnLine Cal 2197***, the Hon'ble Division Bench of this Court relied upon the exceptions carved out by the Hon'ble Supreme Court in the judgment delivered in the matter of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai reported in (1998) 8 SCC 1*** and held that writ petition will not be maintainable when the contractual agreement provides for an efficacious alternate remedy.

24. In the case at hand the petitioners have entered into a contract with the respondent authority and assert rights flowing from the said contract. The authority has called for a response from the petitioners with regard to certain issues. At this stage, it does not appear that any of the fundamental rights of the petitioners have been infringed requiring interference by the Writ Court.

25. In view of the discussions made hereinabove, the Court is not inclined to exercise jurisdiction in the matter. The writ petition accordingly fails and is hereby dismissed.

26. However, since the petitioners approached the Court immediately after the notice to show cause was issued and the writ petition remained pending till the last date within which a reply was to be given by the

petitioners, accordingly, the Court directs the respondent authority to permit the petitioners to submit their reply to the notice dated 7th July, 2025 within 21st July, 2025. If the petitioners file the reply within the aforesaid extended time period, then the authority shall proceed to consider the same. If no reply is filed, the authority shall proceed accordingly.”

Court’s view

21. Before expressing our opinion, let us note the scope of the contract that was entered into by and between the parties. The terms and conditions of the contract were substantially the same as were mentioned in the notice inviting e-tender dated January 17, 2024.

22. Clause 1.1 of the written contract captioned “Project Objectives” reads as follows:-

“1.1 Project Objectives:

a) Through Expression of Interest (EOI)/ NIT vide No. NIT **CEO WB/2024/e-TENDER/001/ Web Casting Solution Dated 17.01.2024**, the Chief Electoral Officer, West Bengal invites proposals for “Provision of Webcasting solution” from reputed companies/agencies/organizations who have proven experience in providing successful large volume Web casting services indifferent states across India. The Pho-Com-Net-Pvt Ltd, has been selected by the e-Tender process and hereinafter referred to as the Selected Agency.

The key objectives of this facility are enunciated below:

- i) Live webcasting of polling activity from ALL polling stations.
- ii) Live content monitoring from browser interface from multiple ends.

iii) Recording of clear video and audio stream from webcasting in server for subsequent retrieval and review.

b) AI based Intelligent Event analysis of video/audio streaming contents obtained from webcasting for detection and feedback of defined events associated with those PS which have certain need based criteria for maximum outreach. Provision for auto selection of PS for which the AI system detects anomaly based on defined events criteria.”

23. The scope of the project was delineated in Clause 1.2 of the contract which reads as follows: -

“1.2 Scope of Project

The Selected Agency is required to webcast day long live video on the day of elections in connection with the General Election to the House of People, 2024 from polling stations in West Bengal i.e. from multiple end points and preserve recorded data stream in appropriate storage facilities with copies at multiple locations within India, as per relevant Information Technology Laws & Guidelines laid down by the Government of India, to mitigate data loss and prevent single point of failure. Onstorage –media for subsequent viewing by the appropriate authority. The deliverables by the selected agency are as defined below:

- 1) **18400 IP Cameras** with WiFi Modem (if required), rechargeable battery, AC power cord and all accessories including camera base, chargers, converters, transducers etc as may be required.
- 2) Mobile 3G/4G internet SIM having optimum signal strength.
- 3) Server for the purpose of storing of web stream and hosting of monitoring application and recording of video and audio stream.
- 4) Developing and providing browser based monitoring application with feature for assignment of physical location to IP Camera.

- 5) Installation and de-installation of IP Camera including setting of date and time as per IST at the webcasting location, packing and unpacking for transportation, charging of battery (where required).
- 6) Providing unedited backup of webcast in physical media immediately after actual webcast to the District Election Officer (DEO). In addition backup of all unedited recorded streams to be handed over to CEO, West Bengal in local server before sign off.
- 7) Technical support services for entire duration including one supervisor for every ten webcasting locations/for every Sector on each date of webcast.
- 8) Training of users for monitoring web cast stream as may be required.
- 9) Providing Training Manual/ User Manual.
- 10) The Selected Agency should provide Solution of Manpower, camera, Cloud server, and one UI for entire state.
- 11) AI based Intelligent Event analysis of video/audio streaming contents obtained from webcasting for detection and feedback of defined events associated with those PS which have certain need based criteria for maximum outreach. Provision for auto selection of PS for which the AI system detects anomaly based on defined events criteria.
- 12) The agency must comply with the Cyber rule of Cloud of Government Department and that all the server of cloud and DR site and resources shall be within India.

Deliverables from the end of Chief Electoral Officer, West Bengal/District Election Officer and team:

1. Providing transport for materials and manpower to designated webcasting locations from the district/sub-divisional head quarter.

2. Providing one exclusive electric connection for operation of Camera etc.”

24. Clause 1.3 of the contract stipulated the functional liability of the selected agency. That clause reads as follows: -

“1.3 Functional Liability for the selected Agency:

The Functional scope given below is indicative. The selected agency will provide webcast services according to, but not limited to the broad scope given below:

1. Providing Web casting of Poll day events inside polling station from separate IP cameras to be installed in selected Polling stations for a day in each phase of General Election to House of People, 2024 in the State of West Bengal.
2. Total duration of Webcasting will be in 7 phases and multiple locations during the entire election extending over a period of 45 days. One IP Camera may be deployed multiple times depending upon the number of phases in separate and distinct locations.
3. Cost of resources and manpower to the districts having elections in the first phase, to be intimated by Chief Electoral Officer, West Bengal, will have to be borne by the selected Agency. Thereafter transportation cost of both resources and manpower, if any, from one district to another after completion of each phase will be borne by the concerned District Election Officers (DEOs).
4. Undertake trial to be conducted two day prior to actual webcast from designated location with actual device configuration after completion of installation. Trail run will be considered successful, if successful live webcast with video and audio output from the polling station can be

viewed by the concerned District Election Officer for a period of 1 (one) continuous hour uninterruptedly.

5. Undertake installation including appropriately mounting the IP Camera and commissioning including configuration and implementation of the web based audio & video streaming software in the Cloud Server with adequate capacity (to be procured by the Selected Agency).

a. The web camera should be so placed to cover the maximum possible area in polling station without hampering the secrecy of vote.

b. The camera should be placed to receive light optimally.

6. Undertake mapping of IP Cameras with District - Assembly Constituency No. & Name and Polling Station No. & Name in the monitoring panel to ensure easy retrieval. Such mapping to be provided in the browser setup itself.

7. The browser application for monitoring the webcast shall provide live video streaming with audio (4K) and Video (360P) with zero inbuilt latency. Application to be password protected to view district wise, parliamentary constituency/assembly constituency wise and polling station wise videos which are streamed from the polling stations. The software shall provide for secure data streaming over the internet, with viewing access only to the Election Commission of India (ECI), Chief Electoral Officer (CEO), District Election Officer (DEO), Returning Officer (RO) and such other Offices as authorized by the ECI/CEO/DEO/RO with user id and password. The data streaming shall in no case be accessible for viewing by unauthorized person over the internet. The Commission shall also be provided with the link to view live streaming on need based.

8. The browser solution should be able to display multiple streams happening at the same time in at least 6 PIP mode for viewing in the Offices of the CEO, DEOS & ROs and ECI by authorized users. The web application must run on all currently available browsers.

9. Browser application should have real time MIS report on uptime of webcast stream from each location with date and time stamp. Real time log of webcast from each camera to be maintained and provided to District Election Officer/Returning Officer for records. The Selected Agency shall develop the application software such that it monitors the data feed from each Polling Station on the polling day based on which the performance status of the data feed, and the live streaming at the offices of the RO/DBO/CEO, will be arrived on the Service Levels provided, to levy penalties as indicated under penalty clause of **NIT CEO**

WB/2024/e-TENDER/001/ Web Casting Solution Dated 17.01.2024.

This software should be vetted from CEO, WB a week before deployment. The Selected Agency shall provide access to dashboard view for more than one locations, i.e. RO, DEO, CEO and ECI HQ which should reflect point of failures, network status, recording status and downtime status. Network quality indicator on each camera should be made available in the User view mode and this should be computed and displayed automatically.

10. Establishment of a centralized Help Desk at the Office of the Chief Electoral Officer, West Bengal headed by competent senior Technical personnel to effectively manage and fix the complaints/issues coming up on the day of Poll. In addition, one competent technical personnel to be provided to District Election Officer from one day prior to installation

and up to the point of completion of loading for transportation to next district.

11. The software shall be able to record video in H.264 compression or other equivalent open formats which can be read by a variety of open source software solution that can be opened in popular browsers.

12. Web cast shall be able to record at least 4 kbps audio in a good quality. This may be either encoded within the video stream or recorded as a separate stream.

13. Further, it must be insured that in the framework used for webcasting, advertisement of any kind is not displayed.

14. The browser application provided should have been developed by the Selected Agency and should not be the free software or shareware available on the internet. During the recording, the user should be able to see the actual video that is being recorded without any inbuilt delay.

15. The software should be able to offer graceful degradation of the recording quality in case there is deterioration in the network speed. This should be automated without any user inputs to be required on this i.e. there should be inbuilt network access negotiation.

16. The necessary load testing should also be carried out simulating real time requirements, so that web streaming event meets the demand and goes through smoothly with good performance.

17. Software provided shall be able to perform query of the video and audio content of the storage. The software shall be able to burn CD and DVD disks on Windows based computers and be able to query the content available based on multiple parameters as Data, Time, Location, etc.

18. The data should in no point be hosted or stored outside India and Selected Agency will not access the data unless authorized by the CEO/DEO.

19. The list of polling station locations from where live web casting has to be undertaken, will be informed in writing to the authorized representative of the Selected Agency at least 3 days prior to the day of actual webcast by the concerned District Election Officer.

20. The web camera should have facility of local recording, with minimum of 3 Megapixel camera resolution. The camera should have night vision capability, wide angle with 30/ 170 degrees coverage. The camera should be having capability of 10x zooming. The camera should have minimum illumination of .05 lux.

21. The camera should support 16-4096 Kbps code rate, support constant bit rate/ variable frame rate of up to 30 fps. Image Control: Backlight compression, automatic white balance, 3D digital noise reduction. The display resolution should be 1920 x1080.

22. IP Camera shall have Pan, Tilt and Zoom Back Control and IR for lowlight/ no light casting. Viewing software may have optional alert based upon Intelligent face detection and audio detection algorithm that can be set in the monitoring application.

23. The recorded material shall be the exclusive property of the CEO and neither the Selected Agency nor any other party will be entitled to utilize the same.

24. The ordered items shall be delivered, installed and commissioned within the time-frame mentioned in the Work Order. The Selected Agency after obtaining the Consignee address shall visit the sites to

assess the readiness of the site for installation. A report in this respect shall be submitted to Client.

25. It should be kept in mind that the requirement of total number of IP cameras may vary depending upon the actual requirement approved by the Chief Electoral Officer, West Bengal. In case of change in the number of cameras, the payment will be made on pro-rata basis of the accepted bid value.

26. AI based Intelligent Event analysis of video/audio streaming contents obtained from webcasting for detection and feedback of defined events associated with those PS which have certain need based criteria for maximum outreach. Provision for auto selection of PS for which the AI system detects anomaly based on defined events criteria.

27. The agency must comply the Cyber rule of Cloud of Government Department and that all the server of cloud and DR site and resources shall be within India.”

25. Clause 1.4 of the contract stipulated the deliverables by the Agency for implementation of webcasting from the polling stations. That clause reads as follows:-

“1.4 Deliverables by the Agency for Implementation of Web Casting from Polling Station for General Election to the House of People, 2024

- a) IP Cameras with WiFi Modem (if required), rechargeable battery, AC power cord and all accessories including camera base, chargers, converters, transducers etc. as may be required. Number of IP Cameras will be detailed in the work order issued from this Office.
- b) Mobile 3G/4G Internet SIM having optimum signal strength.

- c) Server and Cloud storage for the purpose of storing of web stream and hosting of monitoring application and recording of video and audio stream.
- d) Developing and providing browser based monitoring application with feature for assignment of physical location to IP Camera.
- e) Installation and de-installation of IP Camera including setting of date and time as per IST at the webcasting location, packing and unpacking for transportation, charging of battery (where required).
- f) Providing unedited backup from each location with date and time stamp of webcast in physical media after actual webcast to the District Election Officer. In addition backup of all unedited recorded streams to be handed over to CEO, West Bengal.
- g) Technical support services for entire duration including one supervisor (in addition to one District Nodal Person) for every ten webcasting location on each date of webcast.
- h) Nodal Person of the agency will maintain a close liaison with the District Nodal Officer for Web Casting of the district and extend solution for any technical problem faced at district level.
- i) There will be a help desk of the agency at the State Level with a technical person to assist in case of any technical problem faced by the district.
- j) The agency should ensure that the manpower deployed by them are above 18 years of age and should not have any direct political allegiance.
- k) Training of users for monitoring web cast stream.
- l) Providing Training Manual/ User Manual as required.

m) The browser application for monitoring the webcast shall provide live video streaming with audio (4K) and Video (360P) with zero inbuilt latency. Application to be password protected to view District wise videos which are streamed from the designated venues. The software shall provide for secure data streaming over the internet, with viewing access only to the CEO/DEO, and such other Offices as authorized by the CEO/DEO with user id and password. The data streaming shall in no case be accessible for viewing by unauthorized person over the internet.”

26. In the show-cause notice dated July 7, 2025, the respondent alleged certain deficiencies in the service rendered by the appellant and also deficiencies in the equipment/instrument that the appellant was required to supply for implementation of the contract. For the sake of convenience, the notice is reproduced hereunder:-

“No.2292 - Home (Elec)

Dated the 7th

July,2025

To,
Mr. Tauqeer Eram
Sr. Manager, Business Development
Pho Com Net Pvt. Ltd

Sub: Seeking clarification relating to webcasting in Parliament General Election, 2024 and release of EMD/Bank Guarantee.

Dear Sir,

I am directed to state that you had been assigned the work of live streaming/webcasting for more than 80,000 (eighty thousand) polling stations in West Bengal from 6 am till the end of poll during the Parliament General elections 2024, which were conducted in seven phases from 19.04.2024 01.06.2024.

2. I am further directed to remind you that vide letter No. 2931-Home (Elec) dated 6th May, 2024, clarification was sought regarding the details of cameras along with the time frame during which they had become offline during 1 and 2 phase of the election (copy enclosed)
3. You were requested for clarification, regarding cameras along with timeframes which went offline in the 3rd phase of the said elections vide this office memo. No. 3061-Home (Elec) dated 10 May, 2024. (copy enclosed)
4. You were requested to provide complete recording of webcasting footage of certain polling stations where elections were held on 25th May, 2024 and no recording was made available for them after 12 noon vide this office no. 3720- Home (Elec) dated 30th May. 2024. (copy enclosed)
5. Despite the issue of advisory from this end vide letter No. 3755 Home (Elec) 31.05.2024, we were compelled to send you an e-mail on 01.06.2024 (date of polling of 7th Phase) seeking clarification as to why more than 1300 booths were offline at 08:30 AM and so many booths were showing offline after 03:00 PM. (copy enclosed)
6. In none of the above cases you supplied the list of cameras along with the timeframe during which they went offline or provided the complete footage as was repeatedly requested for. Your contention that the cameras had gone off because of the network service providers' inability to make the network available could not be substantiated rather pending software upgrade was a major reason for this fault.

7. Vide email sent at 07:46 PM 01.06.2024 you stated that substances like Vaseline, Fevikwik or toothpaste had been applied on camera lenses and you were facing difficulties, especially in Falta from elements that might uninstall or damage cameras. (copy enclosed)

8. It is absolutely clear that your representatives and technicians never visited the polling booths to ensure the continuity of webcasting which is a crucial component of the ECI mandated non-force multipliers for maintaining vigil over the polling exercises. Your such explanations are nothing but an after thought exercise since you made no efforts to contact the RO/DEO/O/o CEO during the polls and did not file any FIR against the alleged miscreants.

9. Despite repeated requests for 'No Hit' data, no report has been submitted by you till date.

10. You were requested for providing the cameras to be used for validation by TEC eastern region, DOT, but you willfully disobeyed the direction.

11. Cameras used were only supporting IOT sim which created lots of problems during recharge exhaust period.

12. Very few of your representatives were present for monitoring in the control room and you have failed to provide us a list of persons deployed in the CEO Office/DEO Office/Other Offices for monitoring the webcasting feed. No Training material was provided for training of requisite staff to be undertaken by you.

13. In all the seven phases it was found out that on an average 4500-5000 cameras were switched off for continuous time frame of 2 to 4.30 hours spanning over different time ranges of the day. 2nd

phase of the poll showed 2 hours of continuous interruption and 7th phase (being worst) showed 4.30 hours of continuous interruptions.

14. Worst performing camera details could not be received live in the system and could only be obtained offline when live streaming was over.

15. Cameras were showing poor temperature sensitivity in many locations due to improper installations, thereby created lot of interruptions.

16. Due to non-panning facility of the cameras, it could not be rotated to the desired object when the situation demanded.

In the above context, I am further directed to request you to show sufficient reasons why the EMD and the Bank guarantee should not be forfeited and appropriate penalties including black listing be imposed on you.

Your reply should reach this office by 4 pm on 15th July, 2025 positively, failing which further action will be taken ex parte.

Yours faithfully,

Additional Chief Electoral Officer
West Bengal"

27. We have set out certain clauses of the contract hereinabove to indicate the obligations of the appellant under the contract. Diverse factual issues pertaining to alleged failure of the appellant to discharge its contractual obligations have been raised in the show-cause notice which cannot be gone into by the Writ Court. The proper course of action would be for the appellant to reply to the show cause notice dealing with the allegations made therein.

28. It is established law that generally the court does not interfere with a show cause notice. The Court leaves the noticee to respond to the show cause notice. Exceptionally, however, if the show-cause notice is issued by an authority having no jurisdiction to do so or if the same is otherwise an abuse of process, the Court may interfere at the very inception.

29. In the present case, we agree with the learned Single Judge that the impugned notice cannot be said to be without jurisdiction nor can be said to be an abuse of process. It is urged on behalf of the appellant that the respondent had issued the notice with closed mind. In other words, the show cause notice is only an eye wash and the respondent has already made up its mind to penalize the appellant. We however do not find any material on record to suggest that the respondent has already pre-judged the issue. A mere apprehension of the appellant that penalizing it is a foregone conclusion on the part of the respondent, is not enough. We find no tangible basis for such apprehension.

30. It is true that even contractual disputes between the State or an authority within the meaning of Article 12 of the Constitution on the one hand and a private party on the other, can be entertained by the Writ Court. There is no bar in law in that regard. However, if the dispute is of a factual nature, the Writ Court will do well to stay away from it. The Writ Court is not an appropriate or convenient forum to decide factual disputes which can be decided only upon evidence being adduced through examination of witnesses or otherwise.

31. Similarly, the presence of an arbitration clause in a contract between the Government and a private party does not preclude the Writ Court from entertaining disputes arising out of or in relation to such contract. In other words, there being an arbitration clause in the concerned contract, does not act as a bar to the Writ Court entertaining a dispute pertaining to such contract. However, if resolution of such dispute can only be done upon evidence being adduced, it may be prudent for

the Writ Court not to entertain the writ petition and relegate the parties a civil court or to the chosen forum for dispute resolution, i.e., arbitration in the present case.

32. In the present case, the primary reason for the learned Single Judge to dismiss the writ petition was that factual disputes are involved. It is not on the basis of existence of an arbitration clause or because the disputes arise from a contract that the learned Judge dismissed the writ petition.

33. The main argument advanced by the appellant is that the very fact that its bills were paid would establish that the respondent was satisfied with the performance of the contract by the appellant. Otherwise, the bills would have been withheld. Having cleared the bills and the competent authority having issued certificates to the effect that the appellant “successfully completed the supply installation, commissioning and successful implementation of online webcasting services”, the respondent cannot reopen the issue.

While there may be some apparent logic in this argument, it is not so forceful as to persuade us to quash the show cause notice at the very outset. The appellant will be at liberty to urge all points, including this point, in its reply to the show cause notice. It is possible that before clearing the bills of the appellant and before issuing the completion certificates, it escaped the notice of the respondent authorities that there were deficiencies in performance of the contract by the appellant. It is possible that such deficiencies came to their notice or knowledge after paying the bills of the appellant. Hence, we are not minded to interfere with the show cause notice at this stage. We repeat, we do not see any reason to conclude that the show cause notice in question is without jurisdiction or is an abuse of process or has been issued solely to harass the appellant.

34. In so far as the prayer in the writ petition for restraining invocation of the bank guarantees is concerned, the guarantees being irrevocable and unconditional

in nature and since the bank guarantees constitute independent contracts between the issuing bank and the respondent, we are not inclined to interfere with the same, particularly in the writ jurisdiction.

35. In this connection we may note the observations at paragraph 9 of the decision in the case of **Gujrat Maritime Board v. Larsen & Toubro Infrastructure Development Projects Ltd. & Anr., Supra.** which read as follows:

“9. Unfortunately, the High Court went wrong both in its analysis of facts and approach on law. A cursory reading of **LoI** would clearly show that it is not a case of forfeiture of security deposit “... if the contract had frustrated on account of impossibility...” but invocation of the performance bank guarantee. On law, the High Court ought to have noticed that the bank guarantee is an independent contract between the guarantor-bank and the guarantee-appellant. The guarantee is unconditional. No doubt, the performance guarantee is against the breach by the lead promoter, viz., the first respondent. But between the bank and the appellant, the specific condition incorporated in the bank guarantee is that the decision of the appellant as to the breach is binding on the bank. The justifiability of the decision is a different matter between the appellant and the first respondent and it is not for the High Court in a proceeding under Article 226 of the Constitution of India to go into that question since several disputed questions of fact are involved.”

36. Let us now advert to the decisions cited by learned Advocate for the appellant:-

(i) **M/S. Techno Prints v. Chhattisgarh Textbook Corporation & Anr., Supra.** In that case, after conducting a tender process a contract for printing of books was awarded to the private party who was the appellant before the Supreme Court. A show cause notice was issued by

the respondent corporation calling upon the contractor firm to show cause as to why it should not be black listed for a period of three years and the earnest money deposit should not be forfeited due to default in fulfilling contractual terms, thereby causing loss to the respondent corporation. The show cause notice was challenged by the contractor by way of a writ petition. The learned Single Judge dismissed the writ petition. The contractor's appeal to the Division Bench was also dismissed. The matter having reached the Supreme Court, it was held that ordinarily a writ Court should not entertain a petition seeking to challenge a show cause notice unless the Court is convinced that the same has been issued by an authority having no jurisdiction or the same is tainted with mala fides. The Supreme Court held that the nature of the breach of contractual terms on the part of the contractor was not such as to justify issuance of the show-cause notice. "In the peculiar facts of this case", the Supreme Court concluded that asking the contractor / appellant to file reply to the show cause notice will be an empty formality. The show cause notice was set aside permitting the respondent corporation to forfeit the earnest money deposit of Rs. 5 Lakh.

In our opinion, the facts of that case were completely different. In the peculiar facts of that case the Hon'ble Supreme Court found that the Corporation had issued the show cause notice with pre-determined mind and also that its proposal to blacklist the contractor was unreasonable given the nature of breach on the part of the contractor. Accordingly, the show cause notice was set aside. We are of the view that in the present case the show cause notice does not suffer from the vices that the Supreme Court found to exist in the aforesaid case.

(ii) ***Siemens Ltd v. State of Maharashtra & Ors., Supra.*** A similar principle of law was laid down in this case. The Supreme Court held that although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same, inter alia, appears to be without jurisdiction, the question has to be considered from a different angle when a notice is issued with pre-meditation. In such a case a writ petition would be maintainable. In such an event, even if the Court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. In the facts of that case, the Supreme Court found that the respondent authority had clearly made up its mind as regards the liability of the appellant company even prior to issuance of the show cause notice. Hence, the Court held that a writ petition was maintainable.

This principle of law is well established. However, in our opinion, it has no manner of application to the facts of the present case. It cannot be said that the show cause notice issued in this case is by an authority having no jurisdiction to do so or has been issued with a closed mind.

(iii) ***M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Ltd. & Ors., Supra.*** This decision has been included in the written notes of argument but was not cited in the course of hearing. Hence we refrain from dealing with this decision.

(iv) ***Subodh Kumar Singh Rathour v. Chief Executive Officer & Ors., Supra.*** This decision also has been included in the written notes of argument but was not cited in the course of hearing. Hence we refrain from dealing with this decision.

(v) Union of India and Anr. v. Vicco Laboratories, Supra. Paragraphs 31 and 32 of the reported judgment in this case were relied upon. It was held by the Hon'ble Supreme Court that abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, such rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, in that case, the writ court should not hesitate to interfere even at the stage of issuance of show cause notice. However, such interference should be rare and not in a routine manner. Mere assertion by the writ petitioner that the notice was without jurisdiction and / or abuse of process of law would not suffice. It should be prima facie established to be so. *Where factual adjudication would be necessary, interference is ruled out. (Emphasis is mine.)*

Again, this is an established principle of law. However, as we have already opined, the present show cause notice in our view, is neither without jurisdiction nor has been issued in abuse of process of law. Further, factual adjudication is necessary in this case.

(vi) Unitech Limited & Ors. v. Telangana State Industrial Infrastructure Corporation (TSIC) & Ors., (Supra). This case was relied upon in support of the following propositions:- (a) In an appropriate case a writ petition against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. (b) Merely because some disputed question of fact arises for consideration, the same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. (c) The plenary power under Article 226 of the Constitution must be used with circumspection when other remedies

have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters. The presence of an arbitration clause in a contract between a state instrumentality and a private party does not act as an absolute bar to availing remedies under Article 226. (d) In determining as to whether jurisdiction should be exercised in a contractual dispute the Court must eschew disputed questions of fact which would depend upon an evidentiary determination requiring a trial. (Emphasis is mine) However, the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly the presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases though, it needs to be decided from case to case as to whether recourse to a public law remedy is justified.

Again, these propositions of law are unexceptionable and indeed binding on us. However, the said decision does not advance the appellant's case to any extent.

(vii) *M.S. Sanjay v. Indian Bank & Ors., Supra.* This case was relied upon in support of the proposition that the writ court, for the ends of justice can mould the relief prayed for in the writ petition. In the present case, the Court should have directed refund of the bank guarantee amount to the appellant since invocation of the bank guarantee was not justified.

As a general principle of law, no doubt the Writ Court can mould the reliefs prayed for and pass appropriate orders. However, as discussed

hereinbefore, this is not a case where invocation of the bank guarantees should be interdicted, particularly in the writ jurisdiction.

37. We therefore do not find any infirmity in the judgment and order under appeal. The learned Single Judge has duly recorded the facts of the case and has applied the correct law in dismissing the writ petition. It is a well-considered and well-reasoned judgment which does not warrant interference.

38. The appeal therefore stands dismissed. The appellant will be at liberty to file its reply to the show cause notice dated July 7, 2025, within a fortnight from date. In the event the same is done, the competent authority shall take a decision on the show cause notice, in accordance with law, after granting an opportunity of hearing to the appellant. Being a public authority, we hope and trust that the competent authority shall decide the issues involved, fairly and in an impartial manner, without any pre-conceived notion, observing the principles of natural justice. In the event any adverse decision is taken by the competent authority, no effect be given thereto for a period of 2 weeks from the date of the decision so that the appellant gets a window to challenge such decision, if so advised, before the appropriate forum, in accordance with law.

39. In the event the appellant does not submit its reply to the show-cause notice within the time period indicated above or there is no interdiction by a higher forum, the respondent will be at liberty to proceed with the matter on the basis of the show-cause notice, in accordance with law.

40. APO/80/2025 is disposed of accordingly.

41. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)