

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AD-COM 9 of 2024

Niranjan Pipalia

Vs.

Hindustan Steel Works Construction Limited

For the Appellant	:	Mr. Anuj Singh, Adv. Ms. Amrita Pandey, Adv. Mr. Ghanshyam Pandey, Adv.
For the Respondent	:	Mr. Shiv Mangal Singh, Adv.
Hearing Concluded on	:	February 5, 2026
Judgement on	:	March 11, 2026

DEBANGSU BASAK, J.:-

- 1.** Appellant has assailed the judgment and decree dated April 10, 2024 dismissing CS No. 603 of 2024.
- 2.** Learned Advocate appearing for the appellant has contended that, appellant entered into a contract for supply of certain scientific and processed instruments to the defendant. He has referred to the contract being Exhibit C. He has contended that, the respondent wrongfully terminated the same on November 27,

1992. He has referred to the termination letter which is marked as Exhibit F, in this regard.

3. Learned Advocate appearing for the appellant has submitted that, no reason for termination was ascribed by the respondent. He has referred to the written statement of the defendant in this regard.

4. Learned Advocate appearing for the appellant has submitted that, the appellant had taken steps subsequent to the contract. He has referred to Exhibit D and V in this regard. He has also referred to Exhibit X with regard to steps being taken. He has contended that, appellant placed an order on the foreign vendor. The foreign vendor had confirmed the same. Appellant had been asked to open a letter of credit which the appellant did. It is thereafter, that the respondent had purported to terminate the contract on November 27, 1992.

5. Learned Advocate appearing for the appellant has contended that, since the letter of termination does not contain any reasons, no further evidence should be considered and looked upon by the Court, justifying the termination. In support of such contention, he has relied upon **2008 Volume 13 Supreme Court Cases 597 (Bharat Sanchar Nigam Limited and Anr. Vs. BPL Mobile**

Cellular Limited and Ors.), 2023 SCC Online Ori 7084 (Z. Plus Surakhya Seva, Bhubaneswar Vs. State of Odisha and Others), 2011 Volume 1 Supreme Court Cases 167 (Alva Aluminium Limited, Bangkok Vs. Gabriel India Limited), 1978 Volume 1 Supreme Court Cases 405 (Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Others.), 2010 Volume 6 Supreme Court Cases 614 (Chairman, All India Railway Recruitment Board and Anr. Vs. K. Shyam Kumar and Ors.), 2014 Volume 13 Supreme Court Cases 692 (PRP Exports and Others. Vs. Chief Secretary, Government of Tamil Nadu and Others.), 2019 Volume 18 Supreme Court Cases 401 (63 Moons Technologies Limited Vs. Union of India and Others.), 2025 SCC OnLine SC 1979 (Assistant General Manager State Bank of India and Another Vs. Tanya Energy Enterprises through its Managing Partner Shri Alluri Lakshmi Narasimha Varma).

6. Learned Advocate appearing for the appellant has contended that, since the termination of the contract was wrongful, the appellant is entitled to damages. Learned Single Judge has erred in not awarding damages. In support of the contention that the appellant is entitled to damages on wrongful termination of the

contract, he has relied upon **(2025) SCC OnLine Cal 3945 (State of West Bengal and Others. Vs. S.K. Maji)**.

7. Relying upon **1999 2 Cal LT 599 (Pradip Kumar Roy Vs. Smt. Bimala Banerjee & Anr.)** learned Advocate for the appellant has contended that, the written statement should not be read in evidence.

8. Learned Counsel appearing for the respondent has contended that, the plaintiff did not seek specific performance of the agreement. He has referred to the prayers in the plaint. He has contended that, the suit of the appellant was for recovery of damages.

9. Learned Advocate appearing for the respondent has contended that, the appellant initially filed a writ petition. In such writ petition, an order dated November 27, 2000 was passed by the Division Bench. Relying upon Order dated November 27, 2000 passed by the Division Bench in the writ petition filed by the appellant, learned advocate appearing for the respondent has contended that, appellant is not entitled to any damages. He has referred to the findings returned in such appeal. The findings returned in such order, are res judicata between the parties. The suit is a replica of the writ petition.

10. Learned Advocate appearing for the respondent has contended that, the appellant did not put any question in cross-examination as to the alleged misrepresentation made by the respondent to the appellant. He has contended that, the contract was terminated primarily for two reasons namely, high price being charged by the appellant and the appellant not being an agent of the foreign principal.

11. Learned Advocate appearing for the respondent has relied upon ***AIR 2016 SC 2250 (Muddasani Venkata Narsaiah (D) Th. Lrs. Vs. Muddasani Sarojana)*** and ***AIR 1961 Cal 359 (A.E.G Carapiet Vs. A. Y. Derderian)*** in support of the proposition that, since the appellant did not put any question in cross-examination, the appellant is precluded from contending that there was no misrepresentation.

12. By a letter dated November 19, 1992, respondent awarded the contract to the appellant for supply of different instruments at erection site of Sinter Plant No. 1 combined package at Durgapur Steel Plant and supervision during erection, testing and commission for a total cost of Rs. 4,14, 09,495. 55 including West Bengal Sales Tax, packing, forwarding, insurance and available discount. This award of contract by the letter dated November 19,

1992 has been tendered in evidence which was marked as Exhibit C.

13. By a letter dated November 26, 1992, the respondent had cancelled such contract. Appellant had introduced such letter of termination dated November 27, 1992 as Exhibit F at the trial.

14. Exhibit F being a letter of termination dated November 27, 1992 does not contain any ground for termination of the contract as has been rightly pointed out on behalf of the appellant.

15. The respondent in its written statement has taken two grounds for cancellation, namely, exorbitantly high price and the appellant not having requisite registration as the agent of the foreign supplier. According to the respondent, the appellant had misrepresented to the respondent that the appellant was the agent of the foreign supplier in India when it actually was not so. On such discovery, the respondent had terminated the contract.

16. *Mohinder Singh Gilland another (supra)* has held that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

17. Mohinder Singh Gilland another (supra) has been considered in subsequent decisions of the Supreme Court namely **K. Shyam Kumar and Ors. (supra)**, **PRP Exports and Others (supra)**, **63 Moons Technologies Limited (supra)**, and **Tanya Energy Enterprises (supra)**.

18. Tanya Energy Enterprises (supra) while reviewing various authorities of the Supreme Court including **Mohinder Singh Gilland another (supra)** and **63 Moons Technologies Limited (supra)** has held as follows:-

“38. The respective Benches in *Commissioner of Police v. Gordhandas Bhanji* [1951 SCC 1088; 1951 SCC OnLine SC 70; AIR 1952 SC 16.] , *Mohindhr Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405; 1977 SCC OnLine SC 323.] , *Opto Circuit India Ltd. v. Axis Bank* [(2021) 6 SCC 707; (2021) 3 SCC (Cri) 105; 2021 SCC OnLine SC 55.] and *63 Moons Technologies Ltd. v. Union of India* [(2019) 217 Comp Cas 181 (SC); (2019) 18 SCC 401; 2019 SCC OnLine SC 624.] , in our reading, while mandating what has been noticed above was not required to and, as such, rightly did not go that far in establishing the principle that, in all cases coming before it, the court is necessarily bound to confine itself to the grounds mentioned in the administrative order under challenge and cannot look beyond such grounds at all. While the courts, in course of reviewing administrative orders, may not permit additional grounds not found within the four corners of the said order to be raised in an affidavit or in oral arguments, we are inclined to the view that the factual

narrative in such order and the documents referred to therein can certainly be considered together with the case set up in the writ petition, but in appropriate cases. Such cases could include a case, as the present, where the mentioned grounds are found to be untenable and, thus, unsustainable, but an alternative ground (appearing from the factual narrative in the order itself and/or from the records relevant thereto) is traceable which could have validly been mentioned as a ground to support the impugned rejection had there been a proper application of mind by the administrative authority. In all such cases, it would be open to the court to uphold it on such alternative ground subject, of course, to the affected party being put on notice and an opportunity to respond. This approach, which would prioritize fairness and justice over technicalities, does not run contrary to or inconsistent with the law laid down in the afore referred precedents.”

19. An administrative decision, although, being untenable on the face of it, as not being informed with reasons, nonetheless, can be sustained if, such decision, is supported by materials appearing from the decision itself and/or from the records relevant thereto. A Court can consider the materials appearing from the decision impugned and/or the records relevant thereto in order to decide on the legality, validity and sufficiency of the decision impugned. However, a Court considering the records relevant to the impugned decision should ensure that the parties to the lis has access to such relevant materials.

20. In the facts and circumstances of the present case, the letter of termination being Exhibit F by itself does not contain any reasons for such termination. However, the respondent has taken a stand in the written statement that, the appellant was guilty of overpricing, and making its misrepresentation as to a status with the foreign seller.

21. The requirement in *Tanya Energy Enterprises (supra)* is that, when the Court is considering materials other than the administrative decision of the authority then, the Court has to ensure that, the parties to the lis are not prejudiced thereby. In other words, Courts have to ensure that, parties to the lis have access to the same materials as that which the Court is considering along with the impugned administrative decision.

22. In the facts and circumstances of the present case, the impugned judgment and decree of the dismissal of the suit was passed after trial where both the parties had ample opportunity to adduce evidence. Finding of the learned Single Judge that, the decision of termination of contract was not bad is based on cogent evidence placed on record. Learned Trial Judge has noted that, the appellant as the plaintiff was not the agent of foreign companies. Learned Single Judge has also noted that, in the course of cross-

examination, PW 1 had stated that, the appellant is a dealer of instrument and importers of various scientific instruments. In fact, PW 1 has stated that, the appellant never claimed that it was an agent of a foreign company or that the appellant was registered with any Government body.

23. Few documents which have been marked as Exhibits at the trial requires consideration on the issue as to whether or not, the respondent was justified in terminating the contract. One of such document is Exhibit-C which is the award of the contract. In Exhibit-C, clauses 4 and 7 are relevant. Clause 4 of Exhibit C requires the appellant as the supplier to open a letter of credit with the foreign supplier. Clause 7 of Exhibit C requires the appellant as the supplier to provide test calibration certificate manual, guarantee and performance certificate as received from the manufacturer. It also stipulates that the respondent as the purchaser can have inspection of the materials at the principal's premises abroad at the cost of the respondent.

24. By a letter dated January 27, 1992, which has been marked as Exhibit- R, the appellant stated that, it would provide the respondent with guarantee papers received from the principal of the appellant in Germany. It has also stated that the respondent

can take pre-shipment inspection at principal's premises at Germany. It has gone on to say that the appellant is a distributor of the principal at the time of offer to the respondent.

25. In cross-examination of the witnesses of the defendant, on February 10, 2011, the appellant had put question with regard to the appellant being agent of foreign principal. In answer to question No. 41 put in cross-examination, the witness of the respondent had stated, after looking into the letter dated January 27, 1992, being Exhibit R, as to the guarantee and the inspection. In response to the question no. 43, the witness of the respondent in cross-examination had stated that, the respondent was not entering into the contract of on principal to principal basis.

26. These materials on record have established that, the appellant held out that it was the authorized agent of the foreign principal, while it was not so. The respondent had placed the contract upon the appellant on the basis that the appellant was the agent of the foreign principal. The respondent had been misled by the appellant as to its relationship with the manufacturer. The appellant has misrepresented to the respondent that the appellant was the agent of the manufacturer while the appellant was not so.

27. It has been admitted that, the appellant was not the agent of the foreign principal. Therefore, it cannot be said that the respondent had no justification in cancelling the contract.

28. The respondent had at the trial established that, there were sufficient grounds to cancel the contract. The appellant was not prejudiced at the trial since the appellant had sufficient opportunity to lead its evidence as also cross-examine the witness of the respondent. In terms of ***Tanya Energy Enterprises (supra)*** therefore, the learned Trial Judge has rightly considered the materials relevant leading to the decision of termination of the contract being Exhibit 'F'.

29. The cancellation had happened within 7 days from the date of contract. The respondent had awarded the contract on November 19, 1992 and cancelled the same on November 26, 1992. The appellant at the trial did not establish any material to establish damages allegedly suffered within such short period of time to claim compensation.

30. In view of the above discussion, we have found no ground to interfere with the judgment and decree of the dismissal passed by the learned Single Judge.

31. AD-COM 9 of 2024 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

32. I agree.

[MD. SHABBAR RASHIDI, J.]