



CGHC010062652022

2026:CGHC:27907-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
WPC No. 1070 of 2022

Subham Infrastructure Having Registered Office At L-2, Vinoba Nagar, Near Amba Tower, Bilaspur, Chhattisgarh. Through Its Partner Shri Uday Nath Jha, S/o Late Shri Sadanand Jha, Aged About 51 Years, R/o L-2, Vinoba Nagar, Near Amba Tower, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

... Petitioner(s)

versus

1 - Union Of India Through The General Manager, South East Central Railway Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

2 - The Divisional Financial Manager, South East Central Railway, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - The Divisional Financial Manager, South East Central Railway, Nagpur, Maharastra, District : Nagpur, Maharashtra

4 - The Divisional Engineer South East Central Railway, Nagpur, Maharashtra., District : Nagpur, Maharashtra

5 - The Senior Assistant Divisional Engineer, Nagbhir, South East Central Railway, Nagbhir, Maharashtra

6 - The Assistant Divisional Engineer, Nagbhir, South East Central Railway, Maharashtra

...Respondents

(Cause-title taken from Case Information System)

For Petitioner : Shri Harshmander Rastogi, Advocate
through virtual mode

For Respondents/Union of India : Shri Ramakant Mishra, DSG, and Shri
Rishabh Dev Singh, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Justice Ravindra Kumar Agrawal
Order on Board

Per Ramesh Sinha, Chief Justice
07.07.2026

Heard Shri Harshmander Rastogi, learned counsel for the petitioner through virtual mode, and Shri Ramakant Mishra, learned DSG and Shri Rishabh Dev Singh, learned counsel for the Union of India.

1. Petitioner has filed this petition for the following reliefs:

“1) That, this Hon’ble Court may kindly be pleased to quash the impugned order dated 13.01.2022 (Annexure P1), communicated by the DFM, SECR, Nagpur to the DFM, SECR Railway, Bilaspur.

2) That, this Hon’ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.”

2. The present writ petition under Article 226 of the Constitution of India has been preferred challenging the communication dated 13.01.2022 whereby the respondent-Railways directed adjustment/recovery of the Performance Guarantee amount of Rs.16,00,000/- from the petitioner's other ongoing contracts pursuant to termination of the contract.

3. The principal contention of the petitioner is that such adjustment is arbitrary, illegal and impermissible without prior adjudication. The respondents, on the other hand, have raised a preliminary objection regarding the maintainability of the writ petition contending that the dispute emanates purely from a commercial contract governed by the General Conditions of Contract (GCC), which contains an arbitration clause providing an efficacious alternative remedy.

4. Brief facts of the case are that, the petitioner, a partnership firm engaged in civil construction works, was awarded a contract by the South

East Central Railway (SECL) for construction of 3.00 metre wide Foot Over Bridges at Talodhi Road, Alewahi (AWH) and Rajoli(ROL) Railway Stations pursuant to Letter of Acceptance dated 30.04.2020. After furnishing the requisite Performance Bank Guarantee, the petitioner failed to commence the contractual work within the stipulated period. According to the petitioner, the delay occurred on account of the COVID-19 lock down, monsoon season, financial constraints and alleged non-availability of funds with the Railways. Several requests seeking extension of time were made by the petitioner, where after the respondent granted extension subject to penalty under the General Conditions of Contract.

5. Despite repeated reminders and issuance of notices requiring commencement of the work, the petitioner did not undertake execution of the contract. Consequently, the respondents terminated the contract, forfeited the security deposit and performance guarantee, and thereafter issued the impugned communication proposing adjustment of the Performance Guarantee amount from the petitioner's other ongoing contracts in terms of Clause 52-A of the General Conditions of Contract (GCC). Aggrieved thereby, the petitioner has invoked the writ jurisdiction of this Court seeking quashment of the impugned communication.

6. Learned counsel for the petitioner submits that the impugned action of adjusting the Performance Guarantee amount from separate and independent contracts is arbitrary, illegal and violative of Articles 14 and

19(1)(g) of the Constitution of India. It is further contended that the respondents could not have recovered the disputed amount without prior adjudication of their alleged claim by a competent forum.

7. It is further submitted that the delay in execution of the work was attributable to extraordinary circumstances including the COVID-19 pandemic, repeated lock downs, monsoon conditions and lack of availability of funds with the respondent department. Despite these circumstances, the respondents proceeded to terminate the contract and initiate recovery proceedings without fairly considering the petitioner's explanation. Reliance has also been placed upon judicial precedents to contend that recovery from other independent contracts without adjudication is impermissible and that this Court can exercise jurisdiction under Article 226 where the action of the State is arbitrary and unreasonable.

8. Per contra, learned counsel appearing for the respondents submits that the entire dispute arises out of a commercial contract executed between the parties and is governed by the General Conditions of the Contract (GCC). It is also submitted that Clauses 63 and 64 of the GCC specifically provide for resolution of disputes through arbitration and, therefore, the petitioner has an efficacious contractual remedy which ought to be exhausted before invoking the extraordinary jurisdiction of this Court. Clause 63 reads as under :

“Matters finally determined by the Railway – All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall within 120 days after receipt of the Contractor’s representation make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) to (xiii) (B) of General Conditions of Contract or in any clause of the special condition of the contract shall be deemed as ‘excepted matters’ (matters not arbitrable) and decision of the Railway authority, thereon shall be final and binding on the contractor; provided further ‘excepted matters’ shall stand specifically excluded from the purview of the arbitration clause.

9. It is further submitted that disputed questions of fact regarding delay in execution, justification for termination, validity of recovery, applicability of Clause 52-A of the GCC and interpretation of contractual obligations cannot be adjudicated in proceedings under Article 226. Learned counsel submits that the respondents repeatedly granted opportunities and extensions to the petitioner, yet the petitioner failed to commence the work. The termination and consequential action were, therefore, taken strictly in accordance with the contractual provisions. It is accordingly prayed that the writ petition be dismissed leaving the parties to avail the remedy of arbitration, Clause 52 of the GCC which reads as under:-

52-A Lien in Respect of Claims in other Contracts:

(i) Any sum of money due and payable to the Contractor (including the Security Deposit returnable to him) under the contract may be withheld or retained by way of lien by the Railway, against any claim of this or any other Railway or any other Department of the Central Government in respect of payment of a sum of money arising out of

or under any other contract made by the Contractor with this or any other Department of the Central Government.

(ii) However, recovery of claims of Railway in regard to terminated contracts may be made from the Final Bill, Security Deposits and Performance Guarantees of other contract or contracts, executed by the Contractor. The Performance Guarantees submitted by the Contractor against other contracts, if required, may be withheld and encashed. In addition, 10% of each subsequent 'on-account bill' may be withheld, if required, for recovery of Railway's dues against the terminated contract.

(iii) It is an agreed term of the contract that the sum of money so withheld or retained under this Clause by the Railway will be kept withheld or retained as such by the Railway till the claim arising out of or under any other contract is either mutually settled or determined by arbitration, if the other contract is governed by Arbitration Clause or by the competent court as the case may be and Contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this Clause and duly notified as such to the Contractor.

10. Having heard learned counsel for the parties and upon perusal of the material available on record, this Court is of the considered opinion that the dispute raised by the petitioner arises entirely out of the terms and conditions of a commercial contract executed between the parties. The challenge essentially relates to the legality of termination of the contract, forfeiture of the Performance Guarantee, applicability of Clause 52-A of the General Conditions of Contract and the validity of adjustment of contractual dues. Adjudication of these issues necessarily requires interpretation of various contractual clauses as well as determination of disputed questions of fact regarding delay, breach, justification for

extension of time and the contractual rights and liabilities of the respective parties.

11. It is not in dispute that the agreement executed between the parties contains Clauses 63 and 64 of the General Conditions of Contract, whereby disputes and differences arising out of or in connection with the contract are required to be resolved through arbitration, except in respect of excepted matters. The parties, having consciously agreed upon such dispute resolution mechanism, are ordinarily required to adhere to the same.

12. The Supreme Court has consistently held that where disputes arise out of contractual obligations and involve adjudication of disputed questions of fact requiring appreciation of evidence and interpretation of contractual terms, the High Court should ordinarily decline to exercise its writ jurisdiction under Article 226 of the Constitution, particularly where an efficacious alternative remedy by way of arbitration is available. The extraordinary jurisdiction under Article 226 is not intended to substitute the contractual forum voluntarily chosen by the parties.

13. In the present case, the grievances raised by the petitioner regarding wrongful termination, illegal invocation of contractual clauses, recovery of Performance Guarantee and adjustment against other contracts are all matters intimately connected with the contract itself. These issues are more appropriately adjudicated by the arbitral tribunal after permitting both parties to lead evidence and establish their

respective contractual claims and defences. This Court is, therefore, not inclined to undertake such an exercise in its writ jurisdiction.

14. Accordingly, this Court is of the opinion that the present writ petition is not maintainable in view of the arbitration mechanism expressly provided under Clauses 63 and 64 of the General Conditions of the Contract. The disputes sought to be raised by the petitioner are contractual in nature and involve disputed questions of fact, which are best left to be adjudicated by the arbitral forum in accordance with the terms of the agreement.

15. Consequently, the writ petition stands dismissed, leaving it open to the petitioner to avail the remedy of arbitration in accordance with the General Conditions of Contract. It is clarified that this Court has not expressed any opinion on the merits of the rival claims, and all questions of fact and law are left open to be decided by the arbitral tribunal. No order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice