

S/L No. 11
11.02.2026
Ct-25
p.d/-

WPA No. 3307 of 2026

***The Braithwaite Burn and Jessop Construction
Company
vs.
Union of India and Ors.***

*Mr. Soumya Majumder, Sr. Adv.
Ms. Sharmistha Ghosh
Ms. Sanjukta Dutta
... for the petitioner.*

Ms. Garima Raijada

... for UOI & Railway Authorities.

- 1.** The petitioner has filed the present writ application challenging the notice dated 9th February, 2026 wherein 48 hours' notice is given to the petitioner under Clause 62 of the Standard General Conditions of Contract to commence work/to make good the progress of the works, failing which and on expiry of the said period, the contract of the petitioner will be rescinded and the work under this contract will be carried out independently without the participation of the petitioner and Security Deposit shall be forfeited and Performance Guarantee shall be encashed.
- 2.** The petitioner submits that the respondents have issued the tender notice for construction of reinforced earth retaining walls and load bearing

pure abutments with fascia panels teams M-35 grade concrete or richer mix, 18 cms. or above thick including design of reinforced earth system, cement and steel, all soli reinforcement, fasteners, consumables, accessories etc. complete job as per the drawing and specifications.

- 3.** The petitioner has participated in the said tender and awarded the said work on 26th September, 2025. On 23rd October, 2025, a meeting was held and on 18th November, 2025, work progress report was submitted. The petitioner has relied upon the Clause 3.3 of the Standard General Conditions of Contract and submits that in the event of any delay in securing respective clearances leading to delay in execution of work, the contractor shall be entitled to extension of time for the period of such delay in accordance with the provisions of Clause 17A (II).
- 4.** As per Clause 19.3, unless the engineer, within 21 days after receiving a programme, gives notice to the contractor stating the extent to which it does not comply with the contract, the contractor shall proceed in accordance with the programme, subject to its other obligations under the contract. The engineer shall be entitled to rely upon the programme when planning their activities. The petitioner submits that the work programme was

submitted on 18th November, 2025 but the respondent authorities have issued the notice on 21st November, 2025 i.e. prior to 21 days.

- 5.** Prior to the issuance of the notice dated 9th February, 2026, the respondents have issued the notice to the petitioner dated 29th December, 2025, wherein it is alleged that the petitioner failed to show adequate progress in the work. But in the said notice, the authorities have not described with regard to the adequate progress. On receipt of the said notice, the petitioner has given a detailed reply on 5th January, 2026, requesting the authorities to allow the petitioner to demonstrate the required progress in the interest of the timely completion of the project.
- 6.** Learned Counsel appearing for the respondents submits that inspite of notices served upon the petitioner, the petitioner failed to show any progress in the work, and thus, finding no other alternative, the respondents have invoked the provisions of the Clause 62 of the Standard General Conditions of Contract and issued the impugned notice.
- 7.** Learned Counsel for the respondents further submits that the project which was awarded to the

petitioner is a time bound project but the petitioner has not shown any interest to complete the project.

- 8.** The matter was taken up for hearing at 11.00 a.m. but Learned Counsel for the respondents prays for accommodation, accordingly, the matter was passed over till 01.00 p.m. Again the matter was taken up at 01.20 p.m. before rising of the Court and after submissions of the parties, this Court has opined that this Court will grant short stay and directed the respondents to file short affidavit.
- 9.** During lunch hour, the matter was dictated and passed an interim order but the same could not be uploaded due to correction but at 03.30 p.m., the Counsel for the petitioner has handed over a copy of the order dated 11th February, 2026, issued by the Deputy Chief Project Managing Engineer by cancelling the tender and debarring the petitioner from participating in the tender for the balance work and it was informed that the security deposit shall be forfeited and Performance Guarantee shall be encashed.
- 10.** It is unfortunate on the part of the respondent authorities that this Court in an open court informed the Learned Counsels appearing for the respondents that this Court passed an interim stay

for a short period and liberty will be given to file affidavit but inspite of the same, the respondent authorities have passed the impugned order dated 11th February, 2026 by cancelling the tender of the petitioner.

- 11.** Heard the Learned Counsel for the respective parties and perused the materials on record.
- 12.** This Court finds that on 29th December, 2025, the respondents have issued notice under Clause 62 of the Standard General Conditions of Contract directing the petitioner to make good progress within 7 days failing which further action shall be taken against the petitioner. On receipt of the said notice, the petitioner has submitted a detailed reply and informed the respondent that the petitioner has received the drawings for the working pile but the drawings for the test pile are yet to be received from the respondents and requested to specify the test pile location. In the said reply, the petitioner also requested the respondents to handover the encumbrance free work site for planning and execution of the work.
- 13.** It is the specific case of the petitioner as that there is an obstruction at the work site as there are shops and temple and unless and until the same is

not removed, it is not possible for the petitioner to expedite the work.

- 14.** This Court also finds that the work site was handed over on 24th October, 2025 and the work programme was completed on 12th November, 2025, but immediately thereafter the respondent has started issuing notices to the petitioner.
- 15.** Considering the above, this Court finds that the petitioner has made out a *prima facie* case and balance of convenience and inconvenience are in favour of the petitioner and if at this stage, an interim order is not granted, the petitioner will suffer irreparable loss and injury.
- 16.** In view of the above, the impugned notice dated 9th February, 2026, being Annexure P9 and the order dated 11th February, 2026, are stayed till 20th February, 2026 or until further order whichever is earlier.
- 17.** The respondents are directed to file report by way of an affidavit by 17th February, 2026, exception, if any, by 19th February, 2026.
- 18.** List the matter on 19th February, 2026.

(Krishna Rao, J.)

