

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

03 12.8.2025
Sc Ct. no.2

WPA 18127 OF 2025

Harsh Transport Private Limited

Vs.

Union of India & Ors.

Mr. Saptarshi Roy

Ms. Kakali Das Chakraborty.

....For the Petitioner

Mr. Sanajit Kr. Ghosh

Ms. Mary Datta.

....For the UOI

Upon urgency being pleaded on mentioning and since the regular determination has been assigned to this Court, this writ petition has been taken up for consideration by publishing in the daily cause list.

Affidavit-of-service, filed in Court today, is taken on record.

Mr. Saptarshi Roy, learned Advocate appears for the petitioner.

Mr. Sanajit Kr. Ghosh, learned Advocate appears for the respondents/Railway.

The petitioner is engaged in transportation business. Pursuant to an e-Auction held by the South Eastern Railway (for short the Railway) for leasing of 23 tonnes parcel vans in VPH-2 on round trip basis by Train No.18030-18029, Howrah – Mumbai Express for a period of **two years**, the petitioner participated and selected as the successful tenderer.

An e-Auction agreement was formally executed by and between the petitioner and the Railway on **July 31, 2024, Annexure - P1, at page 31** to the writ petition. The petitioner has deposited the earnest money in terms of the contract. The petitioner has been operating the said VPH. On **July 15, 2025, Annexure - P2, at page 34** to the writ petition, a termination notice of thirty days has been served upon the petitioner by the Assistant Commercial Manager. The author of the letter is the Assistant Commercial Manager who has signed for the Senior Divisional Commercial Manager, Kharagpur as it appears from the said termination notice. The said termination notice was issued by invoking **Clause 28.2** of FMC11 of 2022 and **Clause 17.2** of the Standard Condition of Contract.

Clause 28.2 of FMC11 of 2022 at **page 46** to the writ petition specifies that, *by Railway Administration, Railway shall have the right to terminate the contract/Agreement for any reason whatsoever after serving 30 days' notice to the lease holder.*

Clause 17.2 of the Standard Condition of Contract at **page 68** to the writ petition specifies *by Railway Administration, Railway shall have the right to terminate the contract/Agreement without any financial repercussion on either side for any reason whatsoever after serving one month's notice to the contractor.*

Clause 16 of the said FMC11 of 2022 at **page 67** to the writ petition, *inter alia*, provides the provision for

appeal against punitive action of EMD/SD forfeiture/ termination of the contract on any ground.

Exercising the said right of appeal the petitioner has submitted an appeal petition dated **July 18, 2025, Annexure - P5, at page 76** to the writ petition.

Clause 16.1 of the said FMC11 of 2022 at **page 67** to the writ petition provides that the appeal should lie before the DRM (for contract finalized by Division).

The appeal was taken up for consideration and ultimately was rejected by the impugned order dated **July 23, 2025, Annexure-P6, at page 79** to the writ petition by the Assistant Commercial Manager, though the document shows that the Assistant Commercial Manager has signed for Senior Divisional Commercial Manager, Kharagpur.

On these facts, Mr. Saptarshi Roy, learned Advocate submits that, the relevant **clauses 28.2 and 17.2**, as referred to above, clearly show that, the termination notice must be issued by the Railway Administration.

The expression '**Railway Administration**' has been clearly defined under **Sub-Section 32 to Section 2** of the **Railways Act, 1989** (for short the said Act). **Railway Administration means for a Government Railway, General Manager of a Zonal Railway** whereas, the impugned termination notice dated **July 15, 2025** shows it was signed and authored by the Assistant Commercial Manager. The letter never spelt out that the

termination notice was issued pursuant to the delegated authority delegated by the General Manager of the zonal Railway.

Learned Advocate Mr. Roy referring to the impugned appellate order dated **July 23, 2025** submits that, the said order was also issued by the Assistant Commercial Manager and not by the DRM who was the appellate authority before whom the appeal was preferred.

In the light of the above submissions learned Advocate Mr. Roy submits that, both the said impugned notice of termination and the impugned appellate order are wholly without jurisdiction and on the basis of the same no further step can be taken for termination. He also submits that, the Assistant Commercial Manager who has issued the purported impugned termination notice has decided the appeal, - *Judge of his own cause*. This clearly in breach of the basic principle of natural justice.

In support of his submissions Mr. Roy, learned Advocate has referred to a judgment of the coordinate Bench dated **May 18, 2022, In the matter of : Anil Bareja – Vs. – Union of India & Ors.**, rendered in **WPA 21362 of 2021**. The said judgment of the coordinate Bench was affirmed by the Hon'ble Division Bench in its judgment dated **August 23, 2024, In the matter of : Union of India & Ors. -vs.- Anil Bareja & Anr.**, rendered in **FMA 853 of 2022**.

Mr. Sanajit Kr. Ghosh, learned Advocate appearing for the Railway opposing the writ petition at the threshold places reliance on a ***minutes of the meeting*** of the Railway Administration held on ***June 24, 2025*** and submits that, in the said meeting the Railway Administration for the administrative reasons as mentioned therein, has decided to de-touch the VPs from the relevant train on operational ground and to replace those by passenger coaches. Mr. Ghosh, learned Advocate for the Railway submits that, on the basis of the said administrative decision the agreement with the petitioner was decided to be terminated.

Mr. Ghosh, learned Advocate for the Railway then submits that, upon due authority being delegated on the Assistant Commercial Manager the impugned termination notice was issued. This was within the knowledge of the petitioner that the power of the Railway authority was delegated on the Assistant Commercial Manager and the impugned termination notice was issued. To support his contention Mr. Ghosh has placed various correspondences being dated ***August 5, 2024*** and ***June 9, 2025***.

Referring to ***Annexure-P4 at page 73*** to the writ petition Mr. Ghosh submits that, a previous appeal was also filed on the selfsame issue by the petitioner dated ***July 17, 2025***. To support his contention that on the administrative ground and operational reasons it was decided to cancel the agreement with the petitioner, Mr.

Ghosh has placed a communication dated **July 24/29, 2025**, the same is taken on record.

Mr. Sanajit Kr. Ghosh, learned Advocate has further relied upon a decision of the Hon'ble Supreme Court passed ***In the matter of : Shree Sidhballi Steels Ltd. & Ors. -vs- State of U.P. & Ors.***, reported at **(2011) 3 SCC 193** in support of his proposition that in the contractual realm writ petition is not maintainable. He, accordingly, submits that the writ petition is not maintainable and no interim order can be passed.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the impugned termination notice was issued by the Railway authority in terms of **Clause 28.2** of FMC11 of 2022 and **Clause 17.2** of Standard Condition of Contract. Both the clauses clearly specify that, the termination notice can only be issued by the Railway Administration. In terms of the definition provided under the Statute under **Sub-Section 32** to **Section 2** of the said Act, in the facts of the instant case for the Government Railway, the Railway Administration is the General Manager of a zonal Railway. The impugned termination notice appears to have been issued by the Assistant Commercial Manager for the Senior Divisional Commercial Manager but not by the General Manager of the zonal Railway concerned. The termination notice does not specify about any delegation of authority by the

concerned General Manager in favour of the Assistant Commercial Manager.

The law is now well settled that writ petition is also maintainable in the contractual realm. The law has already been discussed and held as such by the Hon'ble Division Bench ***In the matter of : Anil Bareja & Anr. (supra).***

Considering the submissions made on behalf of the Railway that proper delegation of authority is there and on the basis of the decision of the Railway Administration on operational ground the said impugned termination notice was issued, such plea has to be tested on the basis of further discovery of documents on affidavits.

Similarly, the appellate order dated ***July 23, 2025,*** at ***page 79*** to the writ petition has been issued by the Assistant Commercial Manager, the same authority/person who issued the termination notice and not by the DRM. This prima facie shows that, the same authority/person who has issued the termination notice has decided the appeal.

The law is well settled that, an authority cannot be a judge of his own cause.

In view of the above reasons and discussions, this Court is of the considered view that a *prima facie* case has been made out for granting a restraint order on the said termination notice so that termination cannot be effected on August 14, 2025.

In the event the termination is effected without adjudicating the rival contentions of the parties upon disclosure of all the documents and since a *prima facie* and an arguable case has been made out, the petitioner shall suffer irreparable injury. The balance of convenience warrants an order of injunction.

In view of the above, the respondents and/or their men, agents, servants and assigns shall be **restrained** by an order of ***injunction*** from taking any step or further steps or to give any effect or further effect to the said ***termination notice*** dated ***July 15, 2025, Annexure – P2 at page 34*** to the writ petition and the impugned ***appellate order*** dated ***July 23, 2025, Annexure-P6 at page 79*** to the writ petition in any manner whatsoever for a period of ***ten weeks***.

The respondents shall file affidavit-in-opposition on or before ***August 27, 2025***. Affidavit-in-reply, if any thereto, shall be filed by ***September 8, 2025***.

After conclusion of the aforesaid period, the parties shall be at liberty to mention for inclusion of the writ petition in the hearing list before the appropriate Bench, subject to its convenience and upon notice to each other.

(Aniruddha Roy, J.)