

8<sup>th</sup> January,  
2024  
(AK)  
23

**W.P.A 28578 of 2023**

Tirthankar Mukherjee  
Vs.  
Union of India and others

Mr. Anirban Ray  
Mr. Sanjib Bandyopadhyay  
Mr. Sounak Banerjee  
Ms. Anamika Karmakar

...for the petitioner.

Mr. Sanajit Kumar Ghosh

...for the respondents.

1. At the outset, learned counsel for the respondent authorities seeks an adjournment since according to him, only the first thirteen pages of the writ petition has been handed over to him.

2. However, it is evident from the affidavit-of-service filed in court today (which is kept on record) that service has been effected long back on the respondents.

3. Hence, in view of the pressing urgency of the petitioner, the matter is taken up for hearing as a listed motion.

4. Learned senior counsel appearing for the petitioner argues that the respondent authorities acted palpably *de hors* the contract between the parties and in violation of the principles of natural justice by purporting to terminate the subsisting contract between the

petitioner and the respondents for advertising by a communication dated November 18, 2023.

5. In the said communication, the respondents cited the reason that being a World Heritage Site, outstanding universal value of Darjeeling Himalayan Railway lies in its unique engineering system, for which advertisements displayed in various modes are adversely affecting the heritage look of stations and are required to be removed.

6. The respondents also cited Clause 26(iv) which provides that the Railway Administration reserves the right to withdraw/cancel/reject the contract without assigning any reason. No correspondence will be entertained, as per the said Clause, on the issue and the decision of the Railway Administration with regard to any dispute arising out of the said Clause shall be final and binding on the licensee.

7. However, the said Clause is *prima facie* violative of Sections 202 and 204 of the Contract Act.

8. That apart, the said Clause is palpably in contravention of the norms of natural justice pertaining to the principle of *audi alteram partem*.

9. In any event, since the Railway Administration comes within the purview of Article 12 of the Constitution of India, as a State operative, it is the incumbent duty of the Railway Administration to adhere to all norms of fairness, reasonableness and fair play.

10. Thus, the petitioner has made out a strong *prima facie* case as to the impugned termination dated November 18, 2023 being palpably violative of the principles of natural justice, for the writ petition is required to be heard on such question.

11. Accordingly, the respondents shall file their respective affidavits-in-opposition within three weeks from date. Reply, if any, shall be filed within one week thereafter.

12. The matter shall be listed for hearing on February 12, 2024 along with writ petition bearing WPA 28574 of 2023.

14. There shall be stay of operation of the impugned termination dated November 18, 2023 till disposal of the writ petition.

**(Sabyasachi Bhattacharyya, J.)**