2024 SCC OnLine Raj 2071

In the High Court of Rajasthan[†]

(BEFORE DINESH MEHTA, J.)

S.B. Civil Writ Petition No. 200/2024

PMP Infratech Private Limited, through its Authorized Representative Shri Mukesh Kumar Ishwarlal Patel ... Petitioner;

Versus

Rajasthan State Mines and Minerals Limited, through its Chairman and Others ... Respondents.

Connected With

S.B. Civil Writ Petition No. 416/2024

Adhunik Khanan Va Parivahan Theka Sahkari Samiti, through its Authorized Representative Sh. Suresh Kumar Daftari ... Petitioner;

Versus

Rajasthan State Mines and Minerals Limited, through its Chairman and Others ... Respondents.

And

S.B. Civil Writ Petition No. 1805/2024

United Coal Carrier, through Authorized Representative Namely Arvind Singh Rathore ... Petitioner;

Versus

Rajasthan State Mines and Mineral Limited, through Managing Director and Another ... Respondents.

S.B. Civil Writ Petition No. 200/2024, S.B. Civil Writ Petition No. 416/2024 and S.B. Civil Writ Petition No. 1805/2024

Decided on July 19, 2024, [Reserved on : 11/07/2024]

Advocates who appeared in this case :

For Petitioner(s) : Mr. M.S. Singhvi, Sr. Counsel for petitioner PMP Infratech Pvt. Ltd. assisted by Mr. Abhishek Mehta Mr. Vikas Balia Sr. Counsel assisted by Mr. Falgun Buch

Mr. R.N. Mathur, Sr. Counsel (through VC) for petitioner - Adhunik Khanan Va Parivahan Theka Sahkari Samiti assisted by Mr. Dinesh Kumar Godara

Dr. Sachin Acharya, Sr. Counsel for United Coal Carrier assisted by Mr. Devendra Singh Pidiyar

Mr. Gotam Bhadadra

Mr. Prateek Gattani

Mr. Gopal Krishna Chhangani

For Respondent(s) : Mr. Ravi Bhansali, Sr. Counsel for respondent RSMML assisted by Mr. Suniel Purohit

Mr. Udit Mathur

Mr. Mohd. Amaan

The Judgment of the Court was delivered by

DINESH MEHTA, J.:— In these writ petitions, following questions have arisen for consideration of this Court:

(i) Whether the contract once cancelled by the awardee can be revived?

(ii) Whether the Chairman or any authority not being the Appellate Authority or the Court can order revival of an already terminated contract?

(iii) Whether by way of an administrative order, the termination of contract can be kept in abeyance?

2. The above questions are different than usual questions and the same have perhaps come up for consideration of this Court for the first time. Before dilating upon these questions, it would be appropriate to unfold the factual canvass, from which these questions have cropped up.

3. The respondent - Rajasthan State Mines & Minerals Ltd. (hereinafter referred to as 'the RSMML') is a Public Sector Enterprises of Government of Rajasthan - the State is having pervasive control over it and the Chief Secretary of the State is its Chairman. Being Public Sector Enterprises, the grant of contract by it is governed by an enactment known as Rajasthan Transparency in Public Procurement Act, 2010 (hereinafter referred to as 'the RTPP Act').

4. RSMML issued a notice dated 23.03.2023 inviting e-bids from the eligible entities for the contract of "Loading of limestone gitti of various sizes into tippers/dumpers from crusher hopper (s) and/or different stacks lying at company's Sanu mines, District Jaisalmer, its transportation from mines to railway siding at Sanu railway station and its unloading, stacking, watch & ward and mechanized loading of limestone gitti into railway wagons using front end loaders etc." (hereinafter referred to as 'the Loading & Transportation Contract or 'the Contract'').

5. On 30.06.2023, the technical bids were opened and immediately thereafter, financial bids out of the bidders, who were technically found fit were opened. The result of the financial bids were as under:—

(i) United Coal Carrier - (hereinafter referred to as 'UCC' or 'United') - L1

(ii) JRL Mining Pvt. Ltd. - (hereinafter referred to as 'JRL') - L2

(iii) PMP Infratech Pvt. Ltd. (hereinafter referred to as 'PMP') - L3

(iv) Adhunik Khanan va Parivahan Theka Sahkari Samiti (hereinafter referred to as 'Adhunik') - L4

(v) Shri Karni Traders - L5

6. On 17.07.2023 a letter of acceptance came to be issued in favour of United Coal Carrier ('United'), which in turn accepted to transport the quantity as per the bid document. To complete the facts, it may be noted that the letter of acceptance was later on amended vide Corrigendum dated 20.07.2023. Subsequently a formal contract (agreement dated 16.08.2023) came to be executed between 'RSMML' and 'UCC' (through Jai Tanot Mata Mining and Transportation Society Ltd).

7. Though the contractor (UCC) was supposed to commence the work on 17.08.2023 - within 30 days from the date of issuance of Letter of Acceptance, but it could not do so, on account of deteriorated law and order situation (as claimed by UCC). As the facts have emerged, RSMML issued reminders requiring the Contractor 'UCC' to commence work *inter-alia* stating that its established market tie-ups with customers like Steal Authority of India and Tata etc., are adversely affected as they are not able to get the coal and consequently, their sale commitment with them are being breached.

8. Though 'RSMML' issued various letters and required the contractor to commence the work, but the work could commence on 08.10.2023. However, since satisfactory quantity was not being lifted/transported, a score of letters were sent and lastly, a final notice dated 15.12.2023 came to be issued propsing action under the relevant clauses of the Contract. When the Company -'RSMML' did not see any improvement, Clause 4.86 of the Contract was invoked and by way of order dated 24.12.2023, the contract was terminated and the contractor was blacklisted from participating in future tenders for a period of three years, as per Clause-5.42 of the contract.

9. Simultaneous with the termination of the contract of UCC, the RSMML sent an e-mail on 24.12.2023 itself, to PMP Infratech Pvt. Ltd., who had undertaken the same work for the period preceding the tender process in question. By said e-mail, RSMML asked the petitioner (PMP) as to whether it would be willing to perform the contract at the rates that has been agreed by the erstwhile contractor (UCC) and would it be able to commence the work within three days? PMP Infratech Pvt. Ltd. (petitioner in SBCWP No. 200/2024) responded vide their e-mail dated 25.12.2023 sent at 6 : 22 p.m. and agreed to such proposal.

10. On 25.12.2023 itself, a letter of acceptance came to be issued to PMP Infratech Pvt. Ltd. for performing the subject work for three

months at the rates mentioned in the letter of acceptance and work order in furtherance thereof was assured to be issued.

11. Hardly had the RSMML sent the letter of acceptance, a communication dated 26.12.2023 came to be issued by RSMML signed by his Head (Contract) informing *inter-alia* that the order dated 24.12.2023, terminating the contract (with UCC) so also the letter of acceptance dated 25.12.2023 issued to PMP Infratech Pvt. Ltd. has been kept in abeyance.

12. Resultantly, the UCC has been allowed to carry on the loading and transportation work in continuation with the letter of acceptance dated 17.10.2023.

13. Such situation has propelled three companies to approach this Court by way of filing separate writ petitions. PMP Infratech Pvt. Ltd. (Petitioner in S.B. CWP No. 200/2024) has challenged the above referred order dated 26.12.2023 on various counts; 'Adhunik' (Petitioner in S.B. CWP No. 416/2024) has also challenged the said communication dated 26.12.2023 and prayed that the transportation work be given to it. The Contractor (UCC), which was otherwise a party to the proceedings too has opened another front by calling in question the acceptance of technical bid of PMP Infratech Pvt. Ltd. by preferring writ petition No. 1805/2024.

14. PMP Infratech Pvt. Ltd. and Adhunik Khanan both have also prayed that as the entire tender process has vitiated, the respondent - RSMML be asked to initiate fresh tender process.

15. No sooner did Mr. M.S. Singhvi, learned Senior Counsel (appearing for the petitioner - PMP Infratech Pvt. Ltd.) complete narration of the basic facts than Dr. Sachin Acharya, learned Senior Counsel appearing for the Contractor (UCC) flagged that his client has challenged acceptance of petitioner's (PMP's) technical bid, as it was already blacklisted and added that the petitioner had furnished the tender document while concealing such fact, it (PMP) cannot maintain the writ petition, as its very eligibility is under clouds.

16. He also mentioned that the very same petitioner (PMP) has earlier preferred a writ petition challenging the acceptance of the bid of UCC, which writ petition has failed and appeal thereagainst is pending. Reading the prayer clause, Dr. Acharya submitted that in said writ appeal also, the petitioner has prayed that fresh bidding process be ordered to be initiated and identical relief has been claimed in the present writ petition and argued that instant writ petition is not maintainable, as the petitioner cannot pursue two remedies.

17. He proposed that before the writ petition of PMP Infratech Pvt. Ltd. (L-3) is taken up for consideration, the writ petition filed by his client i.e. UCC (being SBCWP No. 1805/2024) be heard and eligibility of PMP be examined.

18. At this juncture, Mr. R.N. Mathur assisted by Mr. Dinesh Kumar Godara interjected and submitted that assuming that PMP Infratech Pvt. Ltd. being L-3 is held ineligible, then also, the matter would not end because, his client - Adhunik Khanan (being L4) has also challenged the manner in which the respondent - RSMML has proceeded including the order dated 26.12.2023, whereby the order of termination has been kept in abeyance. He thus suggested that instead of going into unnecessary exercise of hearing writ petition of the Contractor - UCC, which is nothing but an attempt to avert the attention of this Court from the main issue, the basic question be decided. He submitted that if this Court so feels, the respondent - RSMML be directed to get the work done or to award contract to his client or fresh bids be invited.

19. Having heard rival Senior Counsel on the preliminary objection, this Court is of the view that assuming that there is some substance in the writ petition filed by the contractor - UCC, it is too late in a day to entertain its challenge, particularly when the bids were opened way back on 30.06.2023 and the contractor (UCC) did not lay any challenge to the acceptance of technical bid of PMP Infratech Pvt. Ltd. And it is only when it has realised that its rights are under threat, the present writ petition has been filed as a counter blast to obviate or avoid any adverse impact on its business rights.

20. That apart, the offer which has been made to PMP Infratech Pvt. Ltd., on 25.12.2023 and corresponding letter of acceptance dated 25.12.2023 cannot be said to be a process in furtherance of subject e-bid or proceedings, *per-se*, as the same has been done as a stopgap arrangement for a period of three months or until fresh tender process takes place.

21. According to this Court, once the financial bids have been opened and contract has been executed on 17.07.2023, issue regarding correctness or otherwise of the technical bids looses its significance, particularly when the petitioner PMP was L-3 and a period of six months had since passed, when the petition came to be filed.

22. This Court is of the view that the factual backdrop warrants adjudication of the core issues, which have cropped up and call for answer of the substantial questions that have arisen for consideration of this Court.

23. Having apprised the Court about the factual aspects of the case with all nitty-gritty, Mr. Singhvi, learned Senior Counsel submitted that indisputably, the contract awarded to the contractor (UCC) had been cancelled by the respondent - RSMML vide letter dated 24.12.2023 after following due process, whereafter, the offer was made to the petitioner (PMP Infratech Pvt. Ltd.) on 24.12.2023 to carry on the work

for three months at the rates offered by UCC, which his client - PMP Infratech Pvt. Ltd. has accepted on 25.12.2023 and in furtherance whereof, a letter of acceptance has been issued by the respondent - RSMML. And therefore, the factual and legal position which has emerged is, the contract awarded to the earlier contractor - 'UCC' stood terminated and a fresh contract has come into being between his client (PMP Infratech Pvt. Ltd.) and the 'RSMML'.

24. Learned Senior Counsel submitted that the process upto the stage of grant of contract alone was covered by the RTPP Act and once the erstwhile Contractor - UCC was found successful bidder and contract came to be executed in its favour, the provisions of the RTPP Act had ceased to operate. He argued that the case is, therefore, required to be decided on the principles of contract and general principles of justice, equity and fairness.

25. Learned Senior Counsel argued that as per the terms of the bid document and contract, the Managing Director of RSMML is the final authority and Head (Contract) is authorized to act on behalf of the company including issuance of letter of acceptance, execution of the contract and termination thereof. He argued that once the Head (Contract) of the RSMML has terminated the contract executed with the erstwhile Contractor (UCC) and has decided to enter into a *de-novo* contract with petitioner (PMP Infratech Pvt. Ltd.), with due approval of the Managing Director of the company, the company (RSMML), more particularly Head (Contract) cannot take a u-turn and keep both the termination of the contract with 'UCC' and execution of contract with the petitioner (PMP Infratech Pvt. Ltd.) in abeyance.

26. He invited Court's attention towards the note-sheet and submitted that the same has been done at the instance of the Chairman of the respondent - company, who gave a telephonic direction to the Managing Director, apparently in pursuance of the representation dated 25.12.2023, which the Contractor (UCC) had addressed to the Managing Director of the RSMML.

27. Learned Senior Counsel invited Court's attention towards the document (Annexure-R/1/1 at Page No. 681 of the paper book) and highlighted that the manner in which the things have proceeded, hits at the very root of transparency and fairness. He submitted that a well reasoned and considered decision has been set at naught, simply on telephonic direction of the Chairman that too without recording any reason.

28. It was also argued that if on 24.12.2023, the Managing Director was satisfied that the contract awarded to erstwhile contractor - UCC deserved termination, then, what change did take place within 24 hours, due to which he was impelled rather compelled to keep both the orders (dated 24.12.2023 and 25.12.2023) in abeyance, that too

without recording any reason.

29. Learned Senior Counsel navigated the Court through the note-sheets, which have been placed on record by the respondent - company, more particularly what exists at Page 726 to 729 of the paper -book and submitted that at the time of termination of the contract itself, the Managing Director had noted that counter offer be issued to L2 and L3 and finally in furtherance of the acceptance of the offer, the Letter of Acceptance was issued to the petitioner (PMP Infratech Pvt. Ltd.) on 25.12.2023.

30. He also pointed out that Note No. 35 simply mentions that as per the telephonic direction of the competent authority, whereas, the substance of the Direction was noted on the face of the letter dated 25.12.2023 which was received by the Managing Director on 26.12.2023. He argued that suddenly the impugned communication dated 26.12.2023 came to be issued and position as existed prior to 24.12.2023 restored.

31. Mr. Singhvi invited Court's attention towards the Note No. 37 (Page 728 of the paper-book) and submitted that the proceedings of 29.12.2023 clearly establishes that on receiving the telephonic direction from the Chairman, the termination of contract and letter of acceptance issued to the petitioner were kept in abeyance till further orders with a stipulation that it would be reviewed after ten days.

32. Learned Senior Counsel argued that neither any reason has been assigned by the Chairman of the company, which necessitated issuance of such verbal direction nor has the Managing Director or any other officer of the company mentioned any reason for doing so. He argued that the award of contract by the respondent, which is a public sector enterprise has to be in a transparent manner and that the officers of the company are supposed to adhere to the principles of fairness and transparency. He also submitted that any action or decision, which does not conform to principles of reasonableness and fairness, is well within the domain of this Court's writ jurisdiction under Article 226 of the Constitution of India.

33. Learned Senior Counsel argued with full vehemence that a contract, which has been terminated by a specific order cannot be revived in any manner, much less by an administrative order. With equal vehemence, he contended that the letter of acceptance issued in petitioner's favour cannot be set at naught in the same breath. Summing up his submission, he prayed that the communication dated 26.12.2023 (Annexure-13) be quashed and the respondent RSMML be directed to allow the petitioner (PMP Infratech Pvt. Ltd.) to carry on the work in furtherance of letter of acceptance dated 24.12.2023 (for a period of three months) until fresh auction proceedings are undertaken.

34. To substantiate his arguments, Mr. Singhvi, learned Sr. Counsel

appearing on behalf of Mr. PMP Infratech Pvt. Ltd. cited following judgments:—

(i) *Shree Chamundi Mopeds Ltd.* v. *Church of South India Trust Association CSI Cinod Secretariat, Madras*, (1992) 3 SCC 1.

(ii) *Indian Oil Corporation Ltd.* v. *Amritsar Gas Service*, (1991) 1 SCC 533.

(iii) *Dipak Babaria* v. *State of Gujarat*, (2014) 3 SCC 502.

(iv) *MIC Electronic Ltd.* v. *Municipal Corporation of Delhi*, 2011 SCC OnLine Del 766.

(v) *Mary* v. *State of Kerala*, (2014) 14 SCC 272.

35. Mr. Ravi Bhansali, learned Senior Counsel appearing for the respondent RSMML submitted that true it is, that the decision to review order dated 26.12.2023 has been passed at the instance of the Chairman, but his decision cannot be questioned on the ground of competence, as the Chairman heads the Board of Directors. He added that no final decision has yet been taken and he had simply requested the Managing Director to keep the orders dated 24.12.2023 and 25.12.2023 in abeyance for a short period so that the matter can be examined comprehensively and a decision be taken.

36. In relation to the competency of the Chairman, learned Senior Counsel contended that he being the Chairman of the Board and Head of the company is empowered to issue all sorts of directions, including the direction to keep the orders in abeyance in a bid to protect the interest and image of the company.

37. Learned Senior Counsel submitted that after the execution of the contract, the provisions of RTPP Act have no applicability and the authorities prescribed under the RTPP Act being procuring agency and appellate authority cease to have any role. He emphasized and iterated that the Chairman being Head of the Institution, has rightfully advised the Managing Director to keep the order of termination in abeyance.

38. It was also vehemently argued by Mr. Bhansali that the petitioner (PMP Infratech Pvt. Ltd.) does not have any locus to prefer the writ petition, as no formal contract has yet been executed with it, while also submitting that a terminated contract can well be revived in absence of restriction qua its revival specifically given in the tender document or the contract.

39. Learned Senior Counsel also argued that the petitioner is guilty of giving a false declaration that it was not black listed by other entity and also submitted that as per the petition filed by the private respondent (UCC), as the petitioner (PMP) is having a tainted record and hence, it cannot claim any relief from this Court.

40. In support of his arguments, Mr. Ravi Bhansali, learned Senior Counsel appearing for the respondent - RSMML cited a number of

judgments, which will be dealt with in latter part of the judgment.

41. Dr. Sachin Acharya, learned Senior Counsel appearing for the contractor - UCC submitted that the reason for which his client could not commence work within the stipulated time was law and order situation, which has arisen on account of resistance and strike of the transporters of the area. He submitted that in any event, the work had commenced on 08.10.2023 and there was substantial improvement in the quantity being transported by the petitioner and despite the satisfactory reasons and reply given by his client (UCC), the Head (Contract) and the company had terminated the contract. In such situation, the Contractor approached the Chairman, who in turn directed the Managing Director to keep the order of termination in abeyance, with a view to give some breathing time to the contractor, so that it can improve its performance.

42. Inviting Court's attention towards the quantity being transported, learned Senior Counsel submitted that the entire quantity lying at Sanu site has been cleared and his client is meeting with its obligation and therefore, no interference be made.

43. In support of his arguments, Dr. Acharya, learned Sr. Counsel appearing for the petitioner UCC cited following judgments:—

(i) *Sanjay Agrawal* v. *UOI*, 2019 SCC OnLine Del 11723

(ii) *Tata Motors Ltd.* v. *The BRIHAN Mumbai Electric Supply & Transport Undertaking (BEST)* in Civil Appeal No. 3897/2023 (Arising out of SLP (C) No. 15708/2022) decided on 19.05.2023.

44. To counter the argument of Mr. Singhvi that the Chairman of the company has no authority to direct or intervene in the matters relating to the contract, as she is not an appellate authority, learned Senior Counsel argued that it does not lie in the mouth of the petitioner (PMP Infratech Pvt. Ltd.) to contend that the Chairman cannot direct the Managing Director to keep the termination of contract in abeyance inasmuch as the petitioner - PMP Infratech Pvt. Ltd. itself has addressed a representation (dated 09.05.2024 at page No. 118 of paper-book) to the very same Chairman.

45. Mr. R.N. Mathur, learned Senior Counsel appearing for Aadhunik adopted the arguments of Mr. Singhvi so far as revival of the contract to UCC is concerned, while additionally submitting that if this Court proceeds to allow the petition filed by UCC being SBCWP No. 1805/2024, and in unlikely in event of holding PMP Infratech Pvt. Ltd. to be ineligible, then, the respondent - RSMML be directed to issue work order to his client (Adhunik) which was L4. He submitted that Adhunik is prepared to perform the work at the same rates at which PMP Infratech Pvt. Ltd. has been asked to do by letter of acceptance

dated 25.12.2023.

46. Heard learned counsel for the parties.

47. The copious record comprises a controversy, which lies in a very narrow compass - the order which has given cause of concern to the petitioners is a very short, but a cryptic order. Legality and propriety of a three line order, which is not backed by reasons is the subject matter and the question as to whether it has been directed by a proper authority is the crux of the controversy and the bone of contention.

48. A submission was sought to be made that the dispute in hands is beyond the judicial review. In support of such proposition, judgments were cited by Mr. Bhansali. This Court does not find any substance in such contention because, when the illegality or arbitrariness is writ large, the constitutional court being the protector of fundamental and business rights of the citizen cannot turn a blind eye and allow the illegality rather arbitrariness to continue. The reason for holding this view are set out in the following pargraph.

49. In this regard, a rather recent decision of Hon'ble the Supreme Court dated 09.07.2024 has an important bearing in which Hon'ble the Supreme Court dealing with all the judgments on the aspect of interference in contractual matters, right since *Radhakrishna Agarwal* v. *State of Bihar*, (1977) 3 SCC 457, in which Hon'ble the Supreme Court had said a complete no for interference in writ jurisdiction to the latest being *M.P. Power Management Co. Ltd., Jabalpur* (supra), in which Hon'ble the Supreme Court has culled out principles under which the interference can be made by the High Courts under Article 226 of the Constitution of India.

50. By this recent judgment dated 09.07.2024 rendered in the case of *Subodh Kumar Singh Rathour* v. *The Chief Executive Officers* in Civil Appeal No. 6741/2023 arising out of SLP (C) No. 12941/2023, though in slightly different context, Hon'ble the Supreme Court has held that the tender process cannot be cancelled without there being any compelling reasons. And while holding so, Hon'ble the Supreme Court has succinctly encapsulated the principles that have been laid down by Hon'ble the Supreme Court in the case of *M.P. Power Management Co. Ltd., Jabalpur* v. *Sky Power Southeast Solar India Pvt. Ltd.*, (2023) 2 SCC 703. This Court deems it appropriate to reproduce relevant extract of the said judgment in the case of Subodh Kumar Singh Rathour (supra):—

> "(i) Scope of Judicial Review in matters pertaining to Contractual Disputes:—
>
> This Court held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the courts is no longer a

good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract.

(ii) xx xx xx

(iii) Exercise of Writ Jurisdiction after the Contract comes into Existence:—

This court held that even after the contract comes into existence an action may lie by way of a writ to either (I) obviate an arbitrary or unreasonable action on part of the State or (II) to call upon it to honour its obligations unless there is a serious or genuine dispute as regards the liability of the State from honouring such obligation. Existence of an alternative remedy or a disputed question of fact may be a ground to not entertain the parties in a writ as long as it is not being used as smokescreen to defeat genuine claims of public law remedy.

(iv) Exercise of Writ Jurisdiction after Termination or Breach of the Contract:—

A relief by way of a writ under Article 226 of the Constitution will also lie against a termination or a breach of a contract, wherever such action is found to either be palpably unauthorized or arbitrary. Before turning away the parties to the remedy of civil suit, the courts must be mindful to see whether such termination or breach was within the contractual domain or whether the State was merely purporting to exercise powers under the contract for any ulterior motive. Any action of the State to cancel or terminate a contract which is beyond the terms agreed thereunder will be amenable to the writ jurisdiction to ascertain if such decision is imbued with arbitrariness or influenced by any extraneous considerations."

51. Having precisely explained the judgment of *M.P. Power Management Co. Ltd.* (supra), the Apex Court in the case of *Subodh Kumar Singh Rathour* (supra), has made further observation, which illuminates the path of High Courts as lodestar. This Court would like to reproduce relevant part of the said judgment hereinfra:

"58. Thus, the demarcation between a private law element and public law element in the context of contractual disputes if any, may be assessed by ascertaining whether the dispute or the controversy pertains to the consensual aspect of the contract or tender in question or not. Judicial review is permissible to prevent arbitrariness of public authorities and to ensure that they do not exceed or abuse their powers in contractual transactions and requires overseeing the administrative power of public authorities to

award or cancel contracts or any of its stipulations.

59. Therefore, what can be culled out from the above is that although disputes arising purely out of contracts are not amenable to writ jurisdiction yet keeping in mind the obligation of the State to act fairly and not arbitrarily or capriciously, it is now well settled that when contractual power is being used for public purpose, it is certainly amenable to judicial review."

52. Taking guidance from above referred judgment in the case of *Subodh Kumar Singh Rathour* (supra), this Court feels that it is a fit case for exercise of its jurisdiction under Article 226 of the Constitution of India, as the telephonic direction which had been given by the Chairman neither carries legal sanction nor does it record any reason.

53. It is not in dispute that by way of order dated 24.12.2023, the respondent - RSMML had determined the contract awarded to United Coal Carrier (UCC) after following due procedure. Instead of challenging the said order by way of suit, appeal or a writ petition or any other legal remedy, the Contractor approached the Chairman, who is absolutely an alien to the terms and conditions of NIT and the contract.

54. Simultaneous with the termination of the contract awarded to UCC, the petitioner (PMP Infratech Pvt. Ltd.) received a counter offer, and immediately at 2 : 21 pm of 25th December, 2023, the same was accepted by it. In furtherance thereof a letter of acceptance came to be issued in favour of PMP Infratech Pvt. Ltd., awarding the contract of transportation for a period of three months at the rates mentioned in the letter of acceptance.

55. Consequently, the contract awarded to UCC came to an end and a new contract with PMP Infratech Pvt. Ltd. came into being. Despite being mindful of two such important aspects, the Chairman of RSMML telephonically directed to keep above referred orders dated 24.12.2023 and 25.12.2023 in abeyance. Such directions of the competent authority (Managing Director) were inscribed on the face of the letter dated 25.12.2023 as is evident from perusal of the Note No. 35 at Page No. 727 of the paper-book and were forthwith carried out by the respondent Company.

56. Later on, the following proceedings were drawn, which are available at Page No. 729 of the paper-book (Note No. 37):—

"The letter of the contractor M/s. United Coal Carriers dated 25.12.2023 was received on 26.12.2023 for reconsideration and review of termination decision and issuance of fresh transportation order to M/s. PMP Infratech Ltd. in view of law - and - order situation. On receiving your telephonic direction, both the termination order and work order were postponed till further orders vide letter dated 26.12.2023 in consideration of law-and-order

situation. Further the performance of M/s. United Coal Carriers will be reviewed after 10 days for considering his request for revocation of the termination order and new work order."

57. A perusal of the above extract reveals that the Managing Director had ordered to continue the work of transportation with the earlier contractor - UCC subject to review after ten days, considering its request for revocation of termination order on which, the Chairman has written 'Please speak'. There is nothing on record to show what prevailed in the mind of Chairman and transpired between the officers of the Company to keep the order of termination dated 24.12.2023 so also the work order issued to PMP Infratech Pvt. Ltd. on 25.12.2023 in suspended animation.

58. One fails to comprehend or decipher as to how the order of termination, which had been approved by the competent authority (Managing Director) went before the Chairman and under what procedure? Maybe, the Chairman is administrative head of the respondent company, but the respondent RSMML has failed to show any rule or procedure, under which a day to day decision (not being a policy matter) duly finalized by the competent authority being Managing Director, had gone to the Chairman and under what compelling circumstances the Chairman had intervened.

59. In the opinion of this Court, the termination of contract after following due procedure amounts to a civil death of a business deal. The same can normally not be revived even by the court, Appellate Authority or Arbitrator, let alone by the Managing Director itself of by the Chairman of the awardee company.

60. Before entering into the exercise of exploring answer to the questions that have arisen in the instant case, it would be apt to delineate the 'Laxman Rekha' or the periphery within which the High Court has to confine itself, while exercising its writ jurisdiction under Article 226 of the Constitution of India.

61. Various judgments which have been cited by rival counsel, needs to be gone into and discussed.

(A) Judgments cited by Mr. M.S. Singhvi, Senior Counsel:

(i) *Shree Chamundi Mopeds Ltd.* v. *Church of South India Trust Association CSI Cinod Secretariat, Madras*, (1992) 3 SCC 1:

62. With the help of the judgment in the case of *Shree Chamundi Mopeds Ltd.* (supra), Mr. Singhvi learned Senior Counsel submitted that staying the termination and black listing order would not wipe out its effect. In other words, he contended that maybe, the order dated 24.12.2023 terminating UCC's contract has been kept in abeyance, but it would not wipe out its effect and the work cannot be got executed through it.

(ii) *Indian Oil Corporation Ltd.* v. *Amritsar Gas Service*, (1991) 1 SCC 533:

63. This judgment of Hon'ble the Supreme Court was cited for the proposition "Contract/NIT terms and conditions do not contemplate revival of the contract, once it is determined/terminated.

64. In Para No. 14 of this judgment, Hon'ble the Supreme Court has held that in arbitration proceedings, the relief which could be granted by the Arbitrator after recording the finding that the termination of distributorship was not validly made is, only to award compensation for the period of notice and in that case the plaintiff was held, entitled only to compensation for the loss of earnings for the notice period and not for restoration of his distributorship.

(iii) *Dipak Babaria* v. *State of Gujarat*, (2014) 3 SCC 502:

65. By citing this judgment of Hon'ble the Supreme Court, learned Senior Counsel contended that once a contract is terminated, the only course available with RSMML is to issue a fresh tender and for the interregnum period, they can get the work done through any other agency as provided under Clause 4.86(a).

(iv) *MIC Electronic Ltd.* v. *Municipal Corporation of Delhi*, 2011 SCC OnLine Del 766:

66. With the support of the above referred judgment, learned Senior Counsel would argue that the interim relief of the restoration of the contract could not be granted. He highlighted that the appellant therein was held entitled to ask for compensation for wrongful termination and not for decree/direction for specific performance of the argeement in view of section 14(1)(c) read with section 14(e) of the Specific Relief Act, 1963.

(v) *Mary* v. *State of Kerala*, (2014) 14 SCC 272:

67. This judgment was cited in order to bring to notice of this Court general principles governing doctrine of frustration or impossibility.

(B) Judgments cited by Mr. Ravi Bhansali, learned Senior Counsel:

(i) Judgments in the cases of - *Speech and Software Tech. (India) Pvt. Ltd.* v. *Neos Interactive Ltd.*, (2009) 1 SCC 475, *PSA Mumbai Investments Pte. Ltd.* v. *Board of Trustees of the Jawaharlal Nehru Port Trust*, (2018) 10 SCC 525 and *Labex K.K. International* v. *State of Gujarat*, SCA NO. 2625 of 2019, order dated 9-5-2019 (Guj), were placed for consideration of the Court by Mr. Ravi Bhansali, learned Senior Counsel in order to canvass that since no formal contract was executed with the petitioner (PMP) and only a letter of acceptance was issued, it did not have any binding effect, so as to give a crystallized right in favour of the petitioner (PMP).

(ii) Judgments in the cases of *Rishi Kiran Logistics Pvt. Ltd.* v. *Board*

of Trustees of Kandla Port Trust, (2015) 13 SCC 233, and *Rajasthan Cooperative Dairy Federation Ltd.* v. *Maha Laxmi Mingrate Marketing Services Pvt. Ltd.*, (1996) 10 SCC 405, were relied upon with a view to support his view point that there exists no concluding contract (as only letter of acceptance was issued) and therefore, the High Court should observe judicial restrain. In the same line, judgments in the cases of *Afcons Infrastructure Ltd.* v. *Nagpur Metro Rail Corp. Ltd.*, (2016) 16 SCC 818 and *Jagdish Mandal* v. *State of Orissa*, (2007) 14 SCC 517, were also relied upon.

(iii) The judgment in the case of *Dresser Rand S.A.* v. *Bindal Agro Chem. Ltd.*, (2006) 1 SCC 751, particularly Para Nos. 39 and 40 thereof was cited for the proposition that it is only when the parties have acted on document for a long period of time or have expended considerable sums of money and relies on it then only a right can be said to have been accrued and issuance of letter of intent simplicitor may not be construed to be a letter of acceptance.

68. One cannot lose sight of the fact that the present case is not that of issuance of letter of intention, but one wherein letter of acceptance has been issued to the petitioner (PMP) to commence the work within three days.

69. With a view to lend support to the company's stance that a terminated contract can be revived, learned Senior Counsel relied upon the judgment of Delhi High Court in the case of *Sanjay Agarwal* v. *Union of India*, reported in 2019/DHC/6432, particularly Para Nos. 6 to 9 thereof.

70. A careful reading of the judgment in the case of *Sanjay Agarwal* (supra), particularly Para No. 6 thereof, shows that the Department of Legal Affairs gave its specific opinion that since the contract has been terminated under clause 23.1.1(C) of the Contract, in absence of any stipulation under the contract for its revival and following such opinion, the respondents therein took a decision not to revive the contract. With reference to such decision of the Union of India, Delhi High Court observed thus:

> "*In my opinion, the opinion of the Ministry of Law is totally flawed. There is nothing in the contract or the Indian Contract Act, 1872 that prohibits a party to a contract to reconsider its decision to terminate the contract on a representation made by the other.*"

71. And having recorded such opinion, the Delhi High Court had directed the respondent therein to take a decision on the course of action to be adopted in Minutes of Meeting dated 13.06.2019. It is, therefore, clear that there was no direction or decision for revival of the contract as such, and the Delhi High Court has also expressed its views

in relation to the opinion expressed by the Legal Department of Union of India and the issue, as such, has not been decided.

72. Hence, the observation made by the Delhi High Court cannot be treated to be a precedent and even if it is so, with utmost respect, this Court is not persuaded to follow the views, which have been expressed by the Delhi High Court.

(C) Judgment cited by Dr. Sachin Acharya, learned Senior Counsel:

(i) Dr. Sachin Acharya, learned Senior Counsel appearing for erstwhile Contractor (UCC) also relied upon above referred judgment of Delhi High Court in the case of *Sanjay Agarwal* (supra).

(ii) Another judgment dated 19.05.2023 in the case of *Tata Motors Ltd.* v. *The Brihan Mumbai Electric Supply & Transport Undertaking (BEST)* in Civil Appeal No. 3897 of 2023 (Arising out of SLP (C) No. 15708 of 2022), particularly Para No. 49 thereof, was cited in order to contend that the High Court looked into a petition filed by a party trying to assert its own rights, whereas in light of the judgment of *Raunaq International Ltd.* v. *IVR Construction Ltd.*, (1999) 1 SCC 492, the grant of judicial relief at the instance of the party, which does not fulfill the requisite criteria is misplaced. This judgment was relied upon in a bid to submit that as the petitioner (PMP) is not eligible bidder, no interference can be made at its instance.

73. This issue as raised as preliminary issue has been elaborately dealt with and rejected (Para Nos. 19 to 21), thus, does not require further discussion.

74. Having waded through all the judgments in detail and the law on the subject, this Court would like to observe that the position of law so also societal norms and the expanse of Article 14 of the Constitution of India has taken a half circle. Until, early 70s, the award of contract and decision of the Government were more or less treated sacrosanct were considered as immune from judicial interference. Gradually, the public became more aware and vigilant. After advent of Right to Information Act, 2005 and series of decision expecting fairness and reasonableness, the self imposed restrictions started loosening up.

75. Because, the Courts started coming across cases involving arbitrariness in the administrative decisions and cases depcting large scale favoritism by the authorities converned. As a natural consequence, the Courts which often used to feel that the administrative decision even in the contractual matters, to be insulated from judicial interference were constrained to revisit and re-look at the law, more particularly judicial precedents.

76. Now-a-days, the citizens and business entities have easy access to the file notings, including decision making process of the State instrumentalities. Therefore, when an extreme case of irrational or capricious decision is brought to the notice of the Court, the Courts as a duty bound protector of constitutional and civil rights have started to deal proactively with such issues in order to ensure that fairness and transparency are pervaded and opaqueness and irrationality are dissuaded.

77. The judgment in the case of *Subodh Kumar Singh Rathour* (supra) shows paradigm shift in judicial approach towards scope of interference by the constitutional courts in the matters relating to grant of award and termination of contract. The question, which used to be 'Scope of Interference', has now changed to 'Requirement of Interference'.

78. In the case of *Subodh Kumar Singh Rathour* (supra) the facts were, that the State of West Bengal at the wishes of concerned Minister had cancelled the tender process, in which case Hon'ble the Supreme Court came heavily and declared the notice of cancellation dated 07.02.2023 to be non-est.

79. The judgment in the case of *Subodh Kumar Singh Rathour* (supra) provides guidance rather strength to the writ courts to examine the administrative decisions or decisions in the contractual matters, albeit within the leeway available, when it comes across a case when arbitrariness, irrationality, favouritism or illegality is writ large.

80. This Court hardly finds any substance in Dr. Acharya's argument that instant writ petition is not maintainable, as one of the prayer - "*The respondents be directed to issue fresh e-bid*" is also a prayer in the intra-court appeal filed by it. This Court is firmly of the view that a 'prayer' cannot be picked completely divorced of its context and controversy to contend that the petitioner is riding on two horses. The cause of action and challenge in the appeal before the Division Bench is acceptance of technical bid of 'UCC', whereas in this case, the issue is revival of its terminated contract. Both the petitions are contextually and textually different and simply because one of the prayer is common, it cannot be said that the writ petition is not maintainable.

81. Another contention was raised by Dr. Acharya - typical of an adversarial, while answering to Mr. Singhvi's argument that the Chairman has no power to issue direction to revive the contract. It was argued that the petitioner itself, has written a letter (dated 09.05.2024) to the Chairman, hence, it does not lie in petitioner's mouth to challenge the authority of the Chairman. According to this Court, this argument is also an argument in disguise. A look at the petitioner's letter dated 09.05.2024, reveals that by this letter, the petitioner has requested to review its decision/direction dated

26.12.2023. Such letter, which was written during pendency of the writ petition, that too for reviewing the decision cannot take away petitioner's right to challenge the power of the Chairman.

82. In case of *Indian Oil Corporation Ltd.* (supra), Hon'ble Apex Court has held that Arbitrator, Appellate Authority or any civil court cannot ask for novation of contract and the party at the best can be awarded damages or compensation that too in the event, when they come to a conclusion that the termination of the contract was illegal or unlawful.

83. In the instant case, without there being any adjudication by the authority prescribed under the contract, the Chairman has taken unto herself, the role of Appellate Authority or the court and has stayed not only the order of termination of the contract dated 24.12.2023, but has also put on hold the letter of acceptance dated 25.12.2023, issued in favour of PMP Infratech Pvt. Ltd.

84. This Court has no hesitation in holding that the verbal direction of the Chairman on the one hand is without authority of law and arbitrary on the other, as no reasons have been recorded.

85. The order impugned issued by the Managing Director dated 26.12.2023 is illegal also because it suffers from the vice of dictatorship. Grant of contract and determination thereof, is within the domain of Managing Director and his conscious and informed decision, cannot be tinkered with, howsoever high one may be in the corporate, administrative or hierarchical rung. The Chairman cannot in usual circumstances direct the competent authority to change the decision.

86. “An administrative order, rather an executive fiat cannot set at naught, a duly considered decision or adjudicated order, which has bearing on civil or business rights of contracting parties.”

87. This Court is not much convinced with the stand of the respondent - RSMML that the Chairman being the Head of the Institution is empowered to issue direction oral or written, as has been done in the present case. In the opinion of this Court, the Chairman heads the meeting of the Board of Directors. In normal circumstances, he or she cannot reverse or annul the order, unless they have been placed for consideration of the Board. As informed, as per the norms of the company, grant of contract or determination thereof is not required to be considered or ratified by the Board. Hence, the Chairman alone cannot have any say.

88. It is to be noted that the petitioner (PMP) has sought information under Right to Information about the company's power to revive the contract so also the power of the Chairman in this regard. In furtherance whereof, the respondent RSMML had sent an information (available at Page No. 1012 of the paper-book), which reads thus:

> "As per the records available in this office, there has been no agenda of the Board meeting or decision of the Board are available with Company Secretary Cell, which delegates the powers to the Chairman of the Company related to review the decision of termination of the contract, review the decision of blacklisting of the contractor and to stay the decision of termination of the contract."

89. The file notings shows that on 26.12.2023, the Chairman telephonically directed the Managing Director to keep the termination in abeyance; the noting reproduced in Para 56 gives an impression, as if the same was done for a period of 10 days with a stipulation that the contractor's performance will be reviewed, whereafter, one word order 'Speak' has been written by the Chairman and thereafter, the file records nothing. Neither the Managing Director writes that what direction was given by the Chairman, nor does he review the performance of the 'UCC'.

90. One fails to comprehend that suddenly what change did take place in 24 hours, for which, the respondent - RSMML having taken the extreme action of terminating the contract awarded to UCC was persuaded to take a u-turn, particularly when it had already issued a letter of acceptance to the petitioner (PMP Infratech Pvt. Ltd.) for carrying out the work for three months. The decision which the respondent company had taken on 24.12.2023 of terminating the contract and issuing work order to the petitioner (PMP Infratech Pvt. Ltd.) for three months clearly shows that the respondent company was in the process of initiating a fresh tender process in order to come out of the situation, in which the respondent company had fallen on account of unsatisfactory performance by the erstwhile contractor - UCC.

91. The grant and termination of the contract by the State or instrumentalities of the State have to conform to principles of transparency and fairness, which is the corner stone of good governance. The State cannot act arbitrarily, whimsically or capriciously - It cannot resurrect a terminated contract in the manner done in the case in hands.

92. As a consequence of discussion foregoing, this Court answers the questions as follows:—

(i). A contract once cancelled by the awardee after following due process, cannot be revived by the awardee itself.

(ii) As a consequence of the discussion made in Para No. 59, it is held that the Chairman or any other authority not being the Appellate Authority has no jurisdiction to order for revival of an already terminated contract.

(iii) As this Court has held that the terminated contract cannot be revived, there arises no question of keeping the termination of

contract in abeyance by the awarder itself, that too by an administrative order.

93. CONCLUSION:

(i) The writ petition filed by PMP Infratech Pvt. Ltd. being S.B. Civil Writ Petition No. 200/2024 is allowed.

(ii) The writ petition filed by the petitioner - Adhunik being S.B. Civil Writ Petition No. 416/2024 stands disposed of in terms of the order that has been passed qua S.B. Civil Writ Petition No. 200/2024.

(iii) Having regard to the fact that the order dated 26.12.2023 has been quashed and also in view of the finding that the petitioner - PMP Infratech Pvt. Ltd. has been issued letter of acceptance dated 25.12.2023 not as a bidder, because the applicability of RTPP Act has come to an end, once the contract came to be executed between UCC and the respondent company, the writ petition filed by the UCC being S.B. CWP No. 1805/2024 is not required to be decided, as it would be an exercise in futility to pronounce upon the eligibility of said PMP Infratech Pvt. Ltd..

94. The impugned order dated 26.12.2023 (Annexure-13) in S.B. Civil Writ Petition No. 200/2024, is hereby quashed and set aside. The respondent - RSMML is directed to initiate fresh tender process forthwith.

95. Until the proceedings pursuant to fresh e-bids are finalized and work order is issued, the respondent - RSMML shall be free to get the subject work (covered by the NIT dated 23.03.2023) done, through any of the parties, as deemed expedient. The petitioner (PMP) will be free to file a suit for damages, for wrongful denial of work.

96. While parting with the judgment, this Court deems it appropriate to clarify that it has neither pronounced upon the correctness or legality of the order dated 24.12.2023, whereby the contract awarded to United Coal Carrier (UCC) was determined nor has it pronounced upon the eligibility or otherwise of the petitioner - PMP Infratech Pvt. Ltd.

97. Be that as it may. The rights of the petitioner - UCC to lay challenge to the order dated 24.12.2023, whereby the contract awarded to it has been determined, by way of taking appropriate remedies shall stand reserved.

98. All stay applications and interlocutory application(s), if any, stand disposed of, accordingly.

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† Principal Bench at Jodhpur
