



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2889 OF 2025

Systra MVA Consulting (India) Pvt. Ltd.

... Petitioner

Versus

Mumbai Metropolitan Region

Development Authority

... Respondent

Mr. Venkatesh Dhond, Senior Advocate, along with Mr. Ameya Gohale, Mr. Kunal Singh, Mr. Ranjith Nair, Mr. Chintan Ghandhi and Mr. Arush Kumar, instructed by Shardul Amarchand Mangaldas & Co., for Petitioner.

Dr. Birendra Saraf, Senior Advocate, along with Mr. Jatin Pore, Mr. Suddhasattwa Roy along with Mr. Jay Sanklecha, instructed by DSK Legal, for Respondent.

CORAM : ALOK ARADHE, CJ. & ARIF S. DOCTOR, J.

RESERVED ON : 17th FEBRUARY, 2025

PRONOUNCED ON : 25th FEBRUARY, 2025

JUDGMENT (PER : CHIEF JUSTICE) :

1. Rule. With consent of the learned counsel for the parties, Rule is made returnable forthwith. With consent of learned counsel for respective parties, heard finally.

2. The instant writ petition takes an exception to the impugned notice dated 3rd January, 2025 by which the Mumbai Metropolitan

Region Development Authority (MMRDA) has terminated the contract executed between the petitioner and the MMRDA. In order to appreciate the grievance of the petitioner, relevant facts need mention which are stated supra.

I. FACTS :-

3. The facts leading to filing of this petition, in nutshell are, that the petitioner is a company incorporated in India having 70% stake in Systra-SMCIPL Consortium. The respondent MMRDA is a statutory body engaged in long term planning, promotion of new growth centres, implementation of strategic projects and financing infrastructure development.

4. MMRDA published a tender notice on 11th February, 2020 inviting bids for appointment of General Consultant for the purposes of design, assistance in procurement, construction, management supervision for Mumbai Metro Lines - 5 (Thane-Bhiwandi-Kalyan), 7A [Andheri (East)-CSIA] and 9 (Mira Bhayander). The consortium, viz. Systra-SMCIPL of which the petitioner is a part, submitted its bid on 16th June, 2020 of Rs.90,76,68,320/-.

5. The bid of the petitioner was accepted by MMRDA and a Letter of Acceptance (LOA) dated 31st May, 2021 was issued to the

petitioner by which the petitioner was appointed as General Consultant for system works for part of Mumbai Metro Lines – 5 (Thane-Bhiwandi-Kalyan), 7A [Andheri (East)-CSIA] and 9 (Mira Bhayander). The parties, thereafter, on 28th December, 2021 entered into an agreement. The initial term of appointment of the petitioner was for a period of 42 months from the date on which LOA was awarded to the petitioner, i.e. 31st May, 2021 till 30th November, 2024.

6. The petitioner, on 18th July, 2024, sought extension of term of contract which was granted on 4th October, 2024 by which the term of appointment of the petitioner was extended upto 31st December, 2026.

7. The MMRDA issued notice dated 3rd January, 2025 by which the petitioner was informed that it has decided to discontinue the petitioner's service with effect from 46th day of issuance of the impugned notice. In the aforesaid factual background, this petition has been filed.

II. SUBMISSIONS OF PETITIONER :-

8. Learned Senior Counsel for the petitioner submitted that the impugned notice dated 3rd January, 2025 has been issued *de hors* the

terms of the agreement and does not set out any reasons for discontinuation of the services of the petitioner. It is contended that the MMRDA has not recorded any reasons while discontinuing the services of the petitioner and has failed to act reasonably and fairly and has violated the mandate of non-arbitrariness. It is further contended that the presence of arbitration clause in an agreement is no bar for exercise of jurisdiction under Article 226 of the Constitution of India. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in the following cases :

- (a) *Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others.*¹
- (b) *Union of India and others Vs. Tania Construction Private Limited.*²
- (c) *Unitech Limited and others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and others*³
- (d) *Uttar Pradesh Power Transmission Corporation Limited and another Vs. CG Power and Industrial Solutions Limited and another*⁴
- (e) *Maha Active Engineers India Pvt. Ltd. Vs. Maharashtra State Electricity Transmission Co. Ltd. and others*⁵
- (f) *Michigan Engineers Pvt. Ltd. Vs. State of Maharashtra and another*⁶

¹ (2003) 2 SCC 107 – Para 7

² (2011) 5 SCC 697 – Paras 33 and 34

³ (2021) 16 SCC 35 – Paras 38 and 39.3 to 39.6

⁴ (2021) 6 SCC 15 – Paras 65 to 69

⁵ 2022 SCC OnLine Bom 59 – Paras 37 to 43

⁶ 2023 SCC OnLine Bom 103 – Paras 23 to 28

9. It is contended that this Court cannot be precluded from exercising powers of judicial review and the termination of the services of the petitioner is arbitrary and unreasonable and therefore the same can be interdicted by this Court. It is urged that the arbitration is a private law remedy available to the parties and while adjudicating the disputes in the realm of private law, the arbitral tribunal will only look at the terms of the contract between the parties and cannot deal with the questions of public law which arise for consideration in this writ petition. It is argued that the arbitral tribunal cannot determine the actions of the State to be violative of Article 14 of the Constitution of India. In support of aforesaid submissions, reliance has been placed on the decision of the Division Bench of this Court in ***Board of Control for Cricket in India Vs. Deccan Chronicle Holdings Ltd.***⁷

10. It is submitted that the State is duty bound to act fairly even in contractual field. It is argued that the State is bound to act reasonably in consonance with the principles of fairness and non-arbitrariness, which are the essential facets of Article 14 of the Constitution of India. In support of said submissions, reference has been made to the following decisions of the Supreme Court :

⁷ 2021 SCC OnLine Bom 834 – Paras 222 to 229

(a) *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*⁸

(b) *Union of India and others Vs. Dinesh Engineering Corporation and another*⁹

(c) *Mihan India Ltd. Vs. GMR Airports Ltd. and others*¹⁰

11. While inviting the attention of this Court to the impugned notice, it is contended that the MMRDA has failed to assign any reasons for terminating the contract awarded to the petitioner. It is urged that on a proper reading of the contract and Clause 2.8.1 in particular, it was incumbent on the MMRDA to assign reasons. It is urged that any contrary interpretation would make the Clause unreasonable, oppressive and violative of basic principles of public law. In support of aforesaid submissions, reference is made to decision of Supreme Court in *Asst. Commissioner, Commercial Tax Dept., Works Contract and Leasing, Kota Vs. Shukla and Brothers*¹¹. It is urged that this Court is empowered to exercise writ jurisdiction in contractual matters. In this connection, reference made to the following decisions of the Supreme Court :

(a) *Tata Cellular Vs. Union of India*¹²

⁸ (1991) 1 SCC 71 – Paras 7 and 8

⁹ (2001) 8 SCC 491 – Paras 15 and 16

¹⁰ 2022 SCC OnLine SC 574 – Paras 46, 47 and 50

¹¹ (2010) 4 SCC 785

¹² (1994) 6 SCC 651 – Para 94

- (b) *ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others*¹³
- (c) *Noble Resources Ltd. Vs. State of Orissa and another*¹⁴
- (d) *Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond and Gem Development Corporation Limited and another*¹⁵
- (e) *Joshi Technologies International Inc. Vs. Union of India and others*¹⁶
- (f) *Popatrao Vyankatrao Patil Vs. State of Maharashtra and others*¹⁷
- (g) *State of Uttar Pradesh Vs. Sudhir Kumar Singh and others*¹⁸
- (h) *M.P. Power Management Company Limited, Jabalpur Vs. Sky Power Southeast Solar India Private Limited and others*¹⁹
- (i) *Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others*²⁰

III. SUBMISSIONS OF MMRDA :-

12. On the other hand, the learned Senior Counsel for the MMRDA submits that the instant writ petition is misconceived and proceeds on an erroneous basis that the notice of discontinuance *de hors* the

13 (2004) 3 SCC 553 – Paras 8, 9, 10, 16, 19, 23 and 27

14 (2006) 10 SCC 236 – Paras 14, 15, 18, 19, 26, 27, 29 and 32

15 (2013) 5 SCC 470 – Paras 19 to 22

16 (2015) 7 SCC 728 – Paras 55, 69, 69.1 to 69.4, 70, 70.1, 70.2, 70.7, 70.9 and 70.10

17 (2020) 19 SCC 241 – Paras 9 to 11

18 (2021) 19 SCC 706 – Paras 21, 22 and 26

19 (2023) 2 SCC 703 – Paras 75, 82.1, 82.4 to 82.6, 82.10 to 82.13, 82.15

20 2024 SCC OnLine SC 1682 – Paras 43, 44 and 56 to 59

contract. It is pointed out that the notice of discontinuance has been issued in terms of Clause 2.8.1(f) of the General Conditions of Contract, which enables the MMRDA to terminate the contract without assigning any reasons. It is also pointed out that the impugned notice was issued in consonance with Clause 2.8.1(f) of the General Conditions of Contract. It is contended that the expression “in its sole discretion and for any reason whatsoever” are the words of wide amplitude and the contract is determinable in nature and therefore incapable of being enforced specifically. In support of the aforesaid proposition, reliance has been placed on the Single Bench decision of Delhi High Court in *Egis India Consulting Engineers Private Limited Vs. Pawan Hans Limited*²¹, and the Division Bench decision of Jharkhand High Court in *Sundar Kumar Yadav Vs. Union of India and others*²².

13. It is further submitted that the petitioner has willingly accepted the terms and conditions of the contract and cannot be permitted to eschew its contractual commitments by seeking to invoke public law principles of reasonableness or fairness within the domain of private law contracts. It is contended that there is a distinction between the administrative law and contractual law and where the contracts are

21 2022 SCC OnLine Del 233

22 2024 SCC OnLine Jhar 1328

freely entered with the State, there is no scope for invoking the doctrine of fairness and reasonableness for the purposes of altering the terms and conditions of the contract merely because one of the parties happens to be a State. It is contended that in such a case, the question of invocation of public law based on Article 14 of the Constitution of India does not arise, as the matter is in the realm of private law rights. In support of these submissions, reliance has been placed on the decision of the Supreme Court in *ONGC vs. M/s. Streamline Shipping Col Pvt. Ltd.*²³

14. It is urged that the present contract is inherently a determinable contract, which expressly permits the MMRDA to terminate the contract without assigning any reasons after giving due notice. It is contended that the contract in question contemplates the provisions of consultancy services and the performance of such contract involves performance of a continuous duty and therefore the contract is not enforceable under the provisions of the Specific Relief Act, 1963. It is contended that the writ petition ought not to be entertained, as the agreement executed between the parties contains an arbitration clause. It is pointed out that the present contract relates to an infrastructure project, viz. Metro, and therefore under

²³ 2002 (3) Mh.L.J. 530

the provisions of the Specific Relief Act, 1963, no injunction ought to be granted, as it would impede or delay the progress or completion of the infrastructure project. In this connection, a reference has been made to Section 41(h-a) of the Specific Relief Act, 1963 and the decision of the Supreme Court in *N.G. Projects Vs. Vinod Kumar Jain*²⁴

IV. REJOINDER SUBMISSIONS :

15. Learned Senior Counsel for the petitioner by way of rejoinder submits that the petitioner neither seeks specific performance of the contract nor he is seeking relief of re-writing the terms and conditions of the contract. It is also contended that the petitioner also does not seek an injunction, which would impede or delay the project but the MMRDA cannot wriggle out of its obligation to act in a fair and reasonable manner in contractual field and ought to supply the reasons in support of its decision.

V. ANALYSIS :

16. We have considered the rival submissions and have perused the record. The MMRDA floated a tender on 11th February, 2020 for providing consultancy services for “planning, preliminary, design, proof checking of detailed design, procurement, system integration,

²⁴ (2022) 6 SCC 127

contract administration, project management, construction/erection, supervision, testing and commissioning, integration/interface with civil contractors, liaison, statutory approvals from Government authorities/local bodies, etc. of the complete Mumbai Metro Lines - 5 (Thane-Bhiwandi-Kalyan), 7A [Andheri (East)-CSIA] and 9 (Mira Bhayander) (hereinafter referred to as 'the project').

V(i). Tender Conditions :

17. Clause 1 of the terms of reference for General Consultant provides that the aim of the contract is to obtain general consultancy services for design assistance in procurement, construction management, supervision, etc. for metro lines and services into tender packaging, preparation and finalization of tender documents for all works including evaluation of tenders. Clause 2 of the terms of reference for general consultant provides for scope/obligation of the services of the general consultant. The scope of general consultant includes preparation of tender documents. Appendix VI gives the form of contract for general consultancy services which *inter alia* provides that the general conditions of the contract and the special conditions of the contract will form an integral part of the contract. Clause 2.8.1 provides for termination of contract by the MMRDA. The aforesaid clause, which is relevant for the purposes of

controversy involved in the instant writ petition, is extracted below for the facility of reference :

“2.8 Termination

2.8.1 By the Employer

The Employer may, by not less than thirty (30) days’ written notice of termination to the Consultant [except in the event listed in paragraph (g) below, for which there shall be a written notice of not less than sixty (60) days] such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (j) of this Clause 2.8.1, terminate this Contract:

- a) If the Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.7 hereinabove, within (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently approved in writing, if any of their Members) become insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary,*
- b) if the Consultant, fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 thereof,*
- c) if the Consultant, submit to the Employer a statement which has a material effect on the rights, obligations or*

interests of the Employer and which the Consultant know to be false,

d) if, the Consultant unilaterally abandons work on the contract or does not perform any work or does not render any services for a period of 30 days,

e) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period not less than sixty (60) days,

f) If the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract,

g) if the Consultant promises, offers or gives any bribe, commission, gift or advantage, either himself or through his partners, agents or servants to any officer or employee of the Engineer or the Employer, or to any person on their behalf, in relation to obtaining or execution of this or any other Contract with the employer,

h) if the Consultant suppresses or gives wrong information while submitting the bid,

i) in case of failure to commence the services within the time specified in Clause 2.2 hereof.”

18. Clause 8 of the contract provides that the dispute may be submitted by either party for settlement in accordance with the provisions contained in the special conditions of the contract, whereas Clause 14 of the special conditions of the contract provide

that the dispute between the parties shall be settled by the arbitration.

V(ii). WELL SETTLED LEGAL PRINCIPLES :

19. Before proceeding further, it is apposite to take a note of the well settled principles with regard to judicial review pertaining to contractual disputes.

20. In *Mahabir Auto Stores and others Vs. IOC*²⁵, the Court, *inter alia*, held that even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing. The existence of the power of judicial review however depends upon the nature and right involved in the facts and circumstances of the particular case. It is equally well settled legal principle that where the instrumentality of the State enters the contractual field, it should be governed by the incidence of the contract and that it may not be necessary to give reasons but in the contractual field, fairness must be there to the parties concerned.

²⁵ (1990) 3 SCC 752

21. In *LIC vs. Consumer Education and Research Center*²⁶, it was held that the law as it stood earlier that a State or its instrumentality whose action is hedged with public element cannot be called into question because such action was in the field of private law and is no longer a good law. In Paras 23 and 27, it was held as under :

“26. This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immuned from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any strait-jacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law field cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated.”

“27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into

26 (1995) 5 SCC 482

consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest. ...”

22. Thereafter, the scope of judicial review on the position of law was summarized by the Supreme Court in ***Joshi Technologies International Inc Vs. UOI***²⁷ as follows :

“70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in case where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before

²⁷ (2015) 7 SCC 728

the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. *Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.*

70.5. *Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.*

70.6. *Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.*

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then

the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

70.10. *Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.*

70.11. *The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.”*

23. In ***M.P. Power Management Co. Ltd., Jabalpur Vs. Sky Power Southeast Solar India Pvt. Ltd.***²⁸, while dealing with the scope of judicial review in the matters pertaining to contractual disputes, it was held that if a grievance is made against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract, the grant of relief under the writ jurisdiction can be considered. The relevant extract is reproduced below :

²⁸ (2023) 2 SCC 703

“53. [...] when the offending party is the State. In other words, the contention is that the law in this field has witnesses an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court’s jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

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i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

ii. The principle laid down in Bareilly Development Authority (supra) that in the case of a non statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.”

24. In ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others***²⁹, a three-Judge Bench of the Supreme Court held that the cancellation of a contract deprives a person of his very valuable rights and is a very drastic step. It was further held that when the private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest. It was also held that although the 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. It was further held that in appropriate cases, the

29 2024 SCC OnLine SC 1682

Court can issue a writ to correct contractual wrongs committed by the State to ensure that the instrumentalities of the State act in accordance with the provisions of the Constitution, such as Article 14.

V(iii). REASONS :

25. After having referred to the well settled legal principles as well as the relevant clauses of the contract, we may now examine the challenge to the impugned notice dated 3rd January, 2025.

26. From the aforesaid enunciation of law, as laid down by the Supreme Court in the decisions referred to supra, it is evident that the State or its instrumentality even while acting in contractual field is under an obligation to act fairly or cannot act arbitrarily or unreasonably. In the instant case, the nature of controversy involves public law element and therefore this Court in exercise of power of judicial review can examine whether the action of the instrumentality or agency of the State is fair, just and equitable. In the instant case, the impugned notice of discontinuation of services dated 3rd January, 2025 reads as under :

“No. DS/Metro PIU/ML-5/35/11 Date: 3rd January, 2025

To,

Consortium of Systra MVA Consulting (India) Pvt. Ltd & SYSTRA

Vatika Mindspaces, Tower-B,

12/3, 9th & 10th Floor,

Mathura Road, NH-2, Sector-27/D,

Faridabad, Haryana-121013, India.

[Kind Attention: Shri. Hari Kumar Somalraju, Authorized Representative]

Notice of Discontinuation of Services

Sub: Notice of discontinuation of services under the Contract for Appoint of General Consultant for System Works of part of corridor of Metro Line-5 (Thane-Bhiwandi-Kalyan), Metro Line-7A (Andheri E to CSMIA), Metro Line-9 (Dahisar (E) to Mira Road) of Mumbai Metro Rail Project of MMRDA (“Notice of Discontinuation of Services”).

Ref: 1. Letter of Acceptance dated May 31, 2021 issued by MMRDA to the Consortium of SMC IPL-SYSTRA (“General Consultant”)

2. Contract Agreement executed between Mumbai Metropolitan Region Development Authority (“MMRDA”) and the Consortium of Systra MVA Consulting (India) Private Limited and Systra (“General Consultant”) dated December 28, 2021.

3. MMRDA Letter No.Metro-PIU/System/Line-5, 7A&9/GC/CA-102/EOT.1240 dated 04.10.2024.

Dear Sir,

1. This letter bears reference to the Contract Agreement entered into between the Consortium (i.e. Systra MVA Consulting (India) Private Limited and Systra) (the “General Consultant”), and MMRDA, for appointment of General Consultant for system works of a part of corridor of Metro Line-5 (Thane-Bhiwandi-Kalyan), Metro Line-7A (Andheri (E) to CSMIA), Metro Line-9 (Dahisar (E) to Mira Bhayander) of Mumbai Metro Rail Project of MMRDA (the “Project”). The

General Consultant was required to undertake and implement the project in accordance with the terms of the Contract Agreement.

The Contract for said work was awarded on 31.05.2021 with original completion period of 42 months. Further MMRDA vide letter dated 04.10.2024 accorded Extension of Time for Metro line 5, 7A & 9 up to 31.12.2026.

All capitalized terms used but not defined under this Notice of discontinuation of services shall have the meaning as ascribed to them under the Contract Agreement.

2. MMRDA has decided to discontinue services with effect from 46th day of issue of this letter for the said Contract Agreement. Accordingly, the Notice of Discontinuation of Services of the Contract Agreement is hereby issued.

3. The General Consultant, is therefore directed to take note of the above and take all necessary steps to bring the services to a close in a prompt and orderly manner and make every reasonable effort to keep expenditure for this purpose to a minimum and take steps to deliver the documents, drawings, detailed inventory, and equipment's etc. to MMRDA as required in terms of the contract.

4. This letter is being issued without prejudice and further rights and entitlements of MMRDA under the Contract Agreement and applicable laws.

Please acknowledge receipt of the above.

For and on behalf of MMRDA

(Sushil Chandra)

Director (System)”

27. Thus it is evident that the MMRDA has not assigned any reasons for discontinuation of services of the petitioner.

28. Clause 2.8.1(f) of the General Conditions of Contract cannot be read to mean that the MMRDA has a licence to act unfairly, arbitrarily or unreasonably in the contractual field without assigning reasons. The power under Clause 2.8.1(f) of the Contract has to be exercised in consonance with the principles of fairness, reasonableness and non-arbitrariness. We find that the action of the MMRDA in discontinuation of the terms of the contract, which was extended upto 31st December, 2026, without assigning any reasons, is arbitrary, unfair, and unreasonable.

29. In view of our conclusion that the action of the MMRDA in revoking the contract without assigning any reasons is arbitrary and unfair, therefore it is not necessary for us to examine the nature of contract and whether it is determinable in nature. We are not inclined to grant the relief of specific performance of agreement in this writ petition. The contention that since the MMRDA has acted in exercise of rights available to it under the contract and therefore the petitioner should be relegated to the remedy of arbitration, does not deserve acceptance, as we find that the action of the MMRDA in discontinuing the consultancy services provided to the petitioner is arbitrary and unfair. This Court is not precluded from exercising the

power of judicial review merely on the ground of availability of alternate remedy in case this Court finds the action of termination of contract to be arbitrary and unreasonable.

30. Insofar as reliance placed by the MMRDA on the decision rendered by the Single Bench of Delhi High Court in ***Egis India Consulting Engineers Private Limited*** (supra) is concerned, suffice it to say that the Single Bench of Delhi High Court was dealing with appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996. In ***Sundar Kumar Yadav*** (supra), the Division Bench of Jharkhand High Court has merely relied on Clause 41 of the General Conditions of Contract in that case and has not assigned any reasons in support its conclusion. Therefore, the decisions rendered by the Single Bench of Delhi High Court and the Division Bench of Jharkhand High Court are of no assistance to the MMRDA.

31. Insofar as Division Bench decision of this Court in ***Oil and Natural Gas Corporation Ltd.*** (supra) is concerned, suffice it to say that the Division Bench of this Court was dealing with an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 against an order passed in a petition under Section 9 of the said Act. The scope of an appeal under Section 37(2)(b) of the Arbitration and

Conciliation Act, 1996 and a petition under Article 226 of the Constitution of India is different. Therefore the aforesaid decision of the Division Bench of this Court is also of no assistance to the MMRDA.

32. In the result, the impugned notice dated 3rd January, 2025 is quashed and set aside. The MMRDA is directed to take a fresh decision with regard to either discontinuation or otherwise of the contract awarded to the petitioner afresh after hearing it, by way of a speaking order.

33. The writ petition is disposed of accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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