

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 3307 of 2026

With

CAN No. 1 of 2026

With

CAN No. 2 of 2026

The Braithwaite Burn and Jessop Construction Company

Vs.

Union of India & Ors.

Mr. Soumya Majumder, Sr. Adv.

Mrs. Sharmistha Ghosh

Ms. Sanjukta Dutta

Mr. Ranit Ray

....For the petitioner.

Mr. Sukumar Bhattacharyya

Ms. Garima Rajjada

Ms. Oindrila Chatterjee

Ms. Puja Sonkar

....For the respondents.

Hearing Concluded On : 27.03.2026

Judgment on : 07.04.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition challenging the notice dated 9th February, 2026 wherein the respondents have given 48 hours' notice to the petitioner in terms of Clause 62 of the Standard General Conditions of Contract (SGCC) to commence works /to make good the progress of works, failing which and on expiry of the above said period, the contract will be rescinded and the work under contract will be carried out independently without the participation of the petitioner and the Security Deposit of the petitioner shall be forfeited and Performance Guarantee shall also be encashed.

2. As per E-Tender notice dated 28th April, 2025 for construction of ROB comprising Bow String Girder between Bahirkhand-Tarakeswar at Km 34/4-5 in Seoraphuli, Tarakeswar (SHE-TAK) line and other ancillary works in connection with elimination of LC on 23/A in Howrah Division under the Eastern Railway, the petitioner has participated in the said tender process. The tender of the petitioner was accepted for a total sum of Rs. 67,60,66,602.82/-. The petitioner has deposited a sum of Rs. 38,54,900/- as Earnest Money and is retained as initial Security Deposit in the form of Bank Guarantee and a sum of Rs. 3,38,03,330/- is submitted as Performance Guarantee. Letter of Acceptance was issued to the petitioner on 26th September, 2025.

- 3.** As per the Notice Inviting Tender and the Letter of Acceptance, the work is to be completed within a period of 18 months. On receipt of Letter of Acceptance, the petitioner has taken all necessary steps to mobilize men, machineries and infrastructure at the project site to complete the work within the stipulated time.
- 4.** Mr. Soumya Majumder, Learned Senior Advocate representing the petitioner submits that on 23rd October, 2025, a kick off meeting was held in presence of the respondent authorities wherein the petitioner has given a power point presentation showing the plan of execution and had further sought assistance for detailed drawing of pile as well as other sub structure along with removal of infringement like pipeline, HT and LT power lines etc. He submits that the respondent authorities assured that a coordination meeting will be planned with the State officials and WBPDC to remove the identified infringements.
- 5.** Mr. Mazumder submits that further meeting was held on 18th November, 2025, enumerating the status report with details of work done and also requested for rescheduling the meeting. On 24th October, 2025, drawings in connection with the construction were handed over to the petitioner. On 7th November, 2025 and 21st November, 2025, notices were served to the petitioner informing the petitioner that the petitioner has not mobilized men, plant and machineries. The petitioner has sent detailed reply to the respondents indicating the steps taken by the petitioner. On 27th November, 2025, a kick off meeting was held between the petitioner and the respondent authorities.

- 6.** Mr. Mazumder submits that during execution of the work, the petitioner encountered several impediment necessitating removal or taking effective steps to carry out the work i.e. Environment and forest clearance, 75 Electricity poles/overhead lines, Gas pipelines, 120 Side trees, 208 shop rooms, 2 temples and Health Care Centre. He submits that the petitioner has already initiated additional resources, including mobilization of manpower and supervisory staffs at site.
- 7.** Mr. Mazumder submits that all of a sudden on 29th December, 2025, the respondents have issued a show cause notice to the petitioner under Clause 62 of the Standard General Conditions of Contract and on receipt of the same, the petitioner has replied the same to the respondents on 5th January, 2026, informing about the hindrances which were required to be removed by the respondents to enable the petitioner to commence the work. The petitioner also requested for providing drawings for the test pile and specification of the location of such test pile. The petitioner also requested the respondents for an encumbrance free work site at the allocated work place.
- 8.** Mr. Mazumder submits that without considering the request of the petitioner, the respondents have issued the impugned notice. He submits that for a major infrastructure work, 48 hours' for "whole work" is unreasonable, especially without considering the issues of site constraints, approvals, environment clearance etc. which are within the domain of the respondents.

9. Mr. Sukumar Bhattacharyya, Learned Advocate representing the respondents submits that the writ petition filed by the petitioner is not maintainable. He submits that under Clause 63 of the Contract, there is a provision of Arbitration but the petitioner has filed the present writ petition. He submits that the petitioner has violated the provisions of Clause 7 of the Contract by subletting the contract work to the third party which is not permissible without the consent of the respondent authorities.
10. Mr. Bhattacharyya submits that as per Clause 63.2.14 of the GCC, the parties shall not approach any Court of Law for settlement of such disputes or differences unless and attempt has first been made by the parties to settle such disputes or differences through DAB and Arbitral Tribunal. He has relied upon the judgment in the case of ***State of Kerala and Others Vs. M.K. Jose*** reported in ***(2015) 9 SCC 433*** and submits that a writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact.
11. Mr. Bhattacharyya submits that the petitioner has consistently breached multiple mandatory provisions of the GCC and has failed to adhere its contractual obligations. He submits that as per Site Order and the Instruction Register Book maintained by the Railways, it was specifically instructed the petitioner to commence preliminary activities but the petitioner has not complied with any instructions.

- 12.** Mr. Bhattacharyya submits that instant project does not fall within the ambit of Environmental or Forest clearance requirements under applicable law and contractual stipulations. He submits that Clause 17(A)(ii) has not applicable in the instant case. He submits that the trees in the vicinity of the project site fall within the jurisdiction of the Public Works Department and necessary coordination and actions have already been undertaken by the competent authorities in accordance with law. He submits that there is no impediment to execution of the project on account of environmental or forest clearance.
- 13.** Mr. Bhattacharyya submits that the programme and planning documents dated 18th November, 2025, as alleged by the petitioner is not received by the office of the respondent authorities. He submits that the petitioner was required to commence the work within 15 days from the date of the Letter of Acceptance but even after completion of five months from the date of issuance of letter of acceptance, the project remained at a “planning stage” and no meaningful mobilization of manpower, machineries, materials or site infrastructure is undertaken by the petitioner.
- 14.** The impugned notice issued by the respondents dated 9th February, 2026, is under Clause 62 of the Standard General Conditions of Contract. Clause 62 deals with Determination of Contract owing to Default of Contractor. Clause 63 provides for Settlement of Dispute— Indian Railway Arbitration and Conciliation Rules. The impugned order is issued under Clause 62 of the SGCC. The value of the contract is

more than 50 crores, thus Clause 63.2 is applicable in the present case. As per Clause 63.2.14, *“the parties shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first made by the parties to settle such disputes or differences through DAB and Arbitral Tribunal”*.

- 15.** As per the case of the petitioner, during the course of execution of the work under contract, the petitioner encountered several impediments to take effective steps to carry out the work namely (i) Environmental and Forest Clearance, (ii) 75 Electric poles/ overhead lines, (iii) Gas Pipelines, (iv) 120 Side trees (v) 208 rooms (including hutments and shops) (vi) 2 temples and (vii) Health Care Centre.
- 16.** A kick off meeting was held on 23rd October, 2025, with respect to the contract work wherein in Clause 6 detailed plan for fixing of agencies for various activities like piling etc. girders (Railway span) and other works were discussed. The same was circulated by a letter dated 25th November, 2025. In the said meeting, the petitioner has informed about the progress of the works and plan for execution of the work. The petitioner has also requested for providing the following assistance:

“B. Assistance asked by the agency M/s. BBJ:-

- 1. Detailed drawing of Pile and other sub-structure along with the requisite co-ordinates of proposed construction to be provided. In response, Railway handed over the requisite drawings to the agency on 24.10.25.*
- 2. Removal of infringements like pipe line, HT & LT power lines along with the encroachments.*

C. CE/Con/RSP intimated during the meeting that a co-ordination meeting with State officials and WBPDC is planned shortly to remove identified infringements. He also requested the agency send their representatives also to be part of the said meeting.”

- 17.** On 18th November, 2025, the petitioner has submitted Status Report with the request for rescheduling of the meeting and raised several points for consideration. The respondents have denied about receipt of such representation of the petitioner on 18th November, 2025. The petitioner has also not shown any documents to prove that the letter dated 18th November, 2025, was served upon the respondents. On 21st November, 2025, the respondents have again issued notice to the petitioner requesting the petitioner for sufficient mobilization at the earliest, failing which necessary action shall be initiated. The petitioner has submitted reply to the notices dated 7th November, 2025 and 21st November, 2025 on 24th November, 2025.
- 18.** On 29th December, 2025, a notice under Clause 62 of the Standard General Conditions of Contract was issued to the petitioner directing the petitioner to make necessary arrangements for progress of the work within 7 days, failing which an action as provided in Clause 62 of the SGCC by terminating the Contract and complete the balance work without the participation of the petitioner will be taken. In reply to the notice under Clause 62, the petitioner again requested for handing over the encumbrances free work site for planning and execution. On 9th February, 2026, again a notice under Clause 62 was issued to the

petitioner by giving 48 hours' to commence the work and to make good progress of the work but inspite of commencing the work, the petitioner has filed the present application.

- 19.** Letter of Acceptance was issued to the petitioner on 26th September, 2025. As per the drawings approved by the respondents for the said work, the Road Over Bridge is to be constructed by the Railway over the West Bengal Public Works Department Roads. There are shops, hutments, residential buildings and temples alongside the 9 meter wide Public Works Department Road. Beyond the line of such existing construction of buildings, there is no land provided by the Railways to park the equipments and machineries of the contractor. The proposed construction of Piers coincides with HP gas pipelines over the stretch. The respondents have made out a case that the trees in the vicinity of the project site fall within the jurisdiction of the Public Works Department and necessary coordination and action have been undertaken by the respondents to ensure that all statutory and administrative requirements have been duly complied with and there is no impediment of execution of the project on account of environmental or forest clearance. Form the said stand of the respondents, it is clear that the Railway authorities are in coordination with the Public Works Department but admittedly neither they have placed any order nor permission from the Forest Department or from the Public Works Department to remove the trees by the petitioner.

- 20.** In Clause 3.3 of the SGCC provides that forest and environmental clearances pertaining to the work commensurate with the progress of work /agreed programme, will be obtained by Engineer and in the event of any delay in securing respective clearances leading to delay in execution of work, the Contractor shall be entitled to extension of time period. The Railway authorities stated that they have ensured that all statutory and administrative requirements have been duly complied with but no communication is made to the petitioner that the Public Works Department or the Forest Authorities have no objection for removal of the trees or the said authorities have undertaken to remove the said trees.
- 21.** The respondents have also not specified in their report whether the shops, hutments, residential buildings and temples alongside with the work site has been removed so as enable the petitioner to execute the work as per terms of contract. Before issuance of Tender of the said work, the Executive Director, Civil Engineering (B&S)-II, Railway Board by a letter dated 14th May, 2024, informed the General Managers, Indian Railways that the Division should have contracts to execute works of utility/ fixed structures shifting in advance so that the civil work of Road Over Bridge and Road Under Bridge can be started without any delay. The respondents herein without complying with the same awarded the work and till date no steps have been taken for clearance of the site. The only contention made by the respondents that the trees in the vicinity of the project site fall within the jurisdiction of

Public Works Department and necessary coordination and action have undertaken by the authorities but it is admitted that the trees have not been removed and other obstructions have not been cleared. On the other hand, the respondents have time to time issued notices to the petitioner for progress of the work.

- 22.** The respondents have taken another issue that the petitioner has engaged its execution partner for carrying out project work to strengthen the site execution and ensure adherence to time line which is in violation of Clause 7 of the GCC April 2022 which prohibits assignments or subletting of the contract or any part thereof. The petitioner in his reply dated 5th January, 2026, stated that the petitioner has engaged their partner for carrying out the project work to strengthen site execution and ensure adherence to the timelines. The impugned notice is not issued to the petitioner on the ground that the petitioner has engaged its partner in violation of Clause 7 of the GCC. The impugned notice is only on the issue that the petitioner has not made progress of the work. Clause 7 of the GCC is assignment or subletting of contract but in the reply dated 5th January, 2026, the petitioner has intimated the respondents that the petitioner has engaged its execution partner for carrying out the project works strength and has not assigned or sublet the project to any third party.
- 23.** In reply to the show cause notice dated 29th December, 2025, the petitioner by a reply dated 5th January, 2026, has informed the respondents that the petitioner has already mobilized the resources,

site office has been established, electrical connection from WBSEDCL is in advance stage, two staffs have been posted permanently at the site apart from the regular visit of Project-in-Charge and support of survey team, design team and other technical experts etc. In the said reply, the petitioner has further informed the respondents that electricity poles/overhead lines, gas pipelines, side trees and other encroachments are required to be removed from the site to enable the petitioner to commence the work.

24. The respondents have issued the impugned notice to the petitioner on the allegation that the petitioner has not made progress of the work but have not considered the reply of the petitioner. Even the respondents have not dealt with the reply submitted by the petitioner on 5th January, 2026.

25. The respondents have relied upon the judgment in the case of **M.K.**

Jose (supra), the Hon'ble Supreme Court held that:

“12. As the factual narration would reveal, the respondent has been invoking the jurisdiction of the High Court under Article 226 of the Constitution on various occasions challenging every action which pertain to extension of time, denial of revised estimate by the State Government and many other facets of that nature and the High Court, we must say, has been generously passing orders for consideration by the appropriate authority, for grant of opportunity of being heard to the contractor and to consider his representation in accordance with law. This kind of orders in a contractual matter, in our considered view, is ill-conceived. They not only convert the controversy to a disturbing labyrinth, but encourage frivolous litigation. The competent authority might have

mentioned that more than 50% work remained to be done but that should not have prompted the Appellate Bench hearing the intra-court appeal to appoint a Commission of two advocates and granting them liberty to take assistance of a competent engineer. As the Report would show, the Commission of two advocates have taken assistance of a retired Assistant Executive Engineer and submitted the Report. Though, the learned counsel for the State had not objected to the same, yet we really fail to fathom how a writ jurisdiction can be extended to cause a roving enquiry through a Commission and rely on the facts collected without granting opportunity to the State to file objections to the same and in the ultimate eventuate, cancel the order of termination of contract. What precisely was the quantum of work done and whether there had been a breach by the owner or the contractor, are required to be gone into by the appropriate legal forum.

13. *A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.”*

- 26.** In the case of ***Indsil Hydro Power and Manganese Limited Vs. State of Kerala and Others*** reported in **(2020) 16 SCC 276**, the Hon’ble Supreme Court held that:

“43. *The order of the State Government dated 7-2-2001 shows that there was no deliberate act or default on the part of KSEB. Indeed, it has not been seriously disputed that at the material time, there were agitations on the part of the farmers and certain other circumstances which caused delay in the construction of the transmission lines. However as significant as these reasons are, it should not lead to a situation where a private investor who has acted upon the policy of the State Government being left in the lurch as a result of supervening circumstances which have resulted in the power not being evacuated into the grid due to the non-commissioning of the transmission lines at the*

material time by KSEB. It is imperative that contractual obligations entered into by the State have legal sanctity. A legal regime where the sanctity of contracts is respected and commercial contracts are enforced is essential to the maintenance of the rule of law. Trade and commerce can be freely conducted in a stable legal order which provides remedies for enforcement.

45. *We are in agreement with the view of the State Government, as accepted by the High Court, that the appellant was not entitled to the grant of deemed generation status as a matter of right. Similarly, the concessional power tariff which is applicable for a period of five years from 1994 to 1999 was extended until 20-8-2000. This is undoubtedly a matter of policy and the High Court was justified in coming to the conclusion that it is not open to the Court to foist a particular measure of policy on the State. In what manner the State should remedy the grievance of the private investor is something which should be duly considered by the State Government within the available framework of law and its own policy.*

46. *To facilitate this exercise, we are of the view that it would be appropriate if both the State Government and KSEB together re-visit the entire matter afresh and take an appropriate decision in accordance with law preferably within a period of four months from the receipt of a certified copy of this order. The appellant would be at liberty to supplement its earlier representations with whatever, in addition, it may wish to submit before the State Government within a period of one month of the receipt of a certified copy of this order.”*

27. Clause 63.2 of the SGCC provides for Dispute Adjudication Board (DAB). Clause 63.2.14 provides that in terms of the contract that the parties shall not approach any Court of Law for settlement of such disputes unless an attempt has first been made by the parties to settle such disputes or differences through DAB and Arbitral Tribunal.

- 28.** In the present case also there is a dispute with regard to the work awarded to the petitioner. In one hand, the petitioner claims that the petitioner has already commences the works and one the other hand, the respondents have denied the same and issued the impugned notice.
- 29.** In view of the above, this Court finds that the parties have raised disputed question of facts and in the Standard General Conditions of Contract, a specific provisions have been provided for settlement of dispute, thus the writ petition is disposed of by giving liberty to the petitioner to raise its all dispute to the respondent no. 4 within a week from date and if the respondent no. 4 failed to settle the dispute to refer the matter to the Dispute Adjudication Board in terms of Clause 63.2.1 for settlement. It is submitted by the petitioner that there is no Dispute Adjudication Board is constituted. If no DAB is constituted and if the respondent no.4 failed to settle the dispute, the respondent no. 4 shall immediately refer the matter for Arbitration. Till the respondent no. 4 is decided the dispute raised by the petitioner, if any, the interim order shall continue.
- 30. WPA No. 3307 of 2026** along with **CAN No.1 of 2026** and **CAN No.2 of 2026** are accordingly **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)