
(2015) 06 MP CK 0010
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6567 of 2014

Link Utsav Auto System Pvt. Ltd.

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 109(3), 41(6)

Citation : (2015) 06 MP CK 0010

Hon'ble Judges : U.C. Maheshwari, J;Sheel Nagu, J

Bench : Division Bench

Advocate : Deeksha Mishra and Rohit Mishra, Learned Counsel, for the Appellant; M.P.S. Raghuvanshi, Learned Additional Advocate General, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

U.C. Maheshwari, J.—On behalf of the petitioner, this petition is preferred under Article 226 of the Constitution of India, for issuance the writ of certiorari and mandamus against the authorities of the respondents for the following reliefs:--

"(a) Direction staying the effect and operation of the termination order dated 17-10-2014 till the final disposal of the instant writ petition.

(b) Direction to the respondents to permit the petitioner to carry on the work as per the HSRP contract dated 21-01-2012 and as per

(c) Restrain the respondents from initiating issuing fresh tender or awarding contracting of installing HSRP to any other vendor.

(d) Direction restraining the respondents from invoking/encashing the Bank Guarantee of the Petitioner pursuant to the impugned termination of contract and/or

(e) Direction restraining Respondents from encashing the bank guarantee

submitted under the contract dated 21.01.2012.

and/or

(f) Direction for restoration of the Bank Guarantee if the same has already been encashed.

(g) Direction restraining the respondents from taking any other coercive action against the Petitioner. "

2. Facts giving rise to this petition, in short, are that long before by notification dated 28/03/2001 promulgated under Section 41(6) of the Motor Vehicles Act, 1988 read with Rule 50 of the Motor Vehicles Rules, 1989, directions for affixation of High Security Registration Plate (HSRP) on the motor vehicles were issued. Subsequently, the Central Government again issued order dated 22/08/2001 under Section 109(3) of the Motor Vehicles Act dealing with various facets of manufacture, supply and affixation of new HSRP. Thereafter, by way of another notification 16/10/2001, the Central Government had given directions to implement the aforesaid notification dated 22/08/2001 and the HSRP scheme. Subsequent to it, challenging the aforesaid notifications, several writ petitions were filed before the Apex Court and vide order dated 30/11/2004 in the matter of Association of Registration Plates Vs. Union of India (UOI) and Others, AIR 2005 SC 469 : (2005) 1 CTC 111 : (2005) 1 CTLJ 14 : (2004) 10 JT 147 : (2004) 10 SCALE 60 : (2005) 1 SCC 679 : (2004) AIRSCW 7074 : (2005) 1 Supreme 700 , all such writ petitions were dismissed with a direction to implement HSRP scheme. Subsequent to it, when the schemes were not implemented by various States, on which in the matter of Maninderjit Singh Bitta Vs. Union of India (UOI) and Others, (2008) 3 CLT 359 : (2008) 9 SCALE 204 : (2008) 7 SCC 328 , the Apex Court by allowing various identical petitions vide order dated 08/05/2008, had given directions to implement such scheme in various States. Subsequent to it, in the light of this decision, vide order dated 07/02/2012 the Apex Court had directed the State of MP, to finalize the tender process for implementation of the HSRP scheme within four weeks and implement the scheme with full force by 30/04/2012 for new vehicles and by 15/06/2012 for old vehicles.

3. In connection with the aforesaid subject to implement HSRP scheme in the State of MP by adopting tender process, petitioner M/s. Link Utsav Auto System Private Limited was selected to implement such scheme and in this regard, a written contract (Annexure P/5) was signed between the petitioner and the authorities of the respondents on 21/01/2012 for fifteen years. Pursuant to such contract, the petitioner invested huge resources and developed more than fifty offices with 300 employees for proper implementation of such HSRP scheme.

4. After starting the process of implementation of scheme by the petitioner in accordance with the terms of the contract, in spite that a show-cause notice dated 05/02/2014 (Annexure P/7) was given to it by the authority of the respondent No. 2 i.e. Transport Commissioner for termination of such contract (Annexure P/5). In response, the point-wise reply of such notice (Annexure P/8)

was submitted on behalf of the petitioner on 22/03/2014 in the Office of the authority of respondent No. 2. Thereafter, a review meeting was held between the petitioner and the respondents on 16/04/2014, in which certain corrective measures were agreed to be taken for smooth implementation of the scheme. According to it, three months' time was settled to cure the alleged deficiencies, if any, with further settlement that a monitoring cell will be constituted for review of the corrective measures taken by the petitioner. The minutes of such meeting dated 16/04/2014 were sent to the petitioner on 21/05/2014.

5. It is further case of the petitioner that it's initiated the corrective measures as agreed in the aforesaid review meeting and information of adopting such process was given to the authorities of the respondents on 17/05/2014. Thereafter, by letter dated 07/06/2014 (Annexure P/12) the authorities of the respondents acknowledged initiation of the corrective measures and constitution of monitoring cell. Meanwhile, the petitioner also received an intimation from the authority of the respondent No. 2 about holding a meeting of monitoring cell on 17/06/2014 at Bhopal. On such information, the representatives of the petitioner reached Bhopal but from the side of the respondents- authorities the meeting was cancelled. Thereafter, the petitioner again received fresh communication on 18/06/2014 (Annexure P/14) from the respondents about holding the meeting of monitoring cell on 20/06/2014. Before holding such meeting, on behalf of the petitioner, a detailed report (Annexure P/17) relating to implementation of the decisions taken in the meeting dated 16/04/2014 was submitted on 19/06/2014, but the respondents again unilaterally cancelled the aforesaid scheduled review meeting and before expiry of three months' period fixed to cure the alleged deficiencies, had terminated the contract dated 21/01/2012. Such termination order was challenged on behalf of the petitioner in the first round of litigation by preferring a writ petition viz. WP 3654/2014 (Annexure P/15), stating the same to be arbitrary and illegal, on various grounds stated in the petition. This Court by entertaining such writ petition vide order dated 25/06/2014, issued notices to the respondents and meanwhile, by interim order, stayed the invocation of the bank guarantee given by the petitioner. On appearance on behalf of the respondents, after extending opportunity of hearing to the parties vide order dated 05/08/2014 (Annexure P/17), such writ petition was finally decided and aforesaid termination order was quashed with some directions.

6. It is further pleaded that in compliance with the direction of the aforesaid order dated 05/08/2014, the respondents issued a letter dated 25/08/2014 (Annexure P/18) to the RTOs about restoration of the contract but did not give any instruction to the RTOs to allow the petitioner to carry out the work of affixation of HSRP. In spite of issuance of such letter to the RTOs across the State of MP, the petitioner was not allowed to carry out the work of collection and affixation of HSRP by the respondents and only after four days from 25/08/2014 the date of issuance of aforesaid letter, contrary to the agreed conditions of the meeting dated 16/04/2014 as well as of the direction of this Court given in WP 3654/2014 vide dated 05/08/2014, before expiry of period of show-cause notice

fixed, had given second show-cause notice dated 29/08/2014 (Annexure P/20) to the petitioner for termination of contract. It is further stated that copies of the concerning documents on which aforesaid second show-cause notice was based, were not supplied to the petitioner. Such second show-cause notice was challenged on behalf of the petitioner on 02/09/2014 through WP No. 5409/2014. In such writ petition, besides the aforesaid ground, violation of the agreed terms of the meeting dated 16/04/2014 and of the order of this Court dated 05/08/2014 passed in WP No. 3654/2014 and other available ground to show mala fide and preconceived notion of the respondents- authorities were taken. Period of ten days to reply to the second show-cause notice was also challenged. In presence of the parties, such WP 5409/2014 was disposed of vide order dated 09/09/2014 (Annexure P/23), with some material observations and directions.

7. Under the liberty given by the Court in aforesaid order dated 09/09/2014, on behalf of the petitioner an application under Clause -17 of the contract agreement for invocation of the dispute resolution was submitted on 24/09/2014 in the office of the respondents- authorities, wherein on behalf of the petitioner, name of Justice Usha Mehra, a retired Judge was proposed as a nominee arbitrator. Subsequent to it, before expiry of period to file reply to the second show-cause notice and without making any inquiry, so also without deciding the aforesaid application, to refer the matter for dispute resolution in accordance with the procedure, vide notice dated 24-26/09/2014 (Annexure P/26) a third show-cause notice for termination of aforesaid contract was given to the petitioner. Subsequent to aforesaid notice, within a prescribed period of thirty days on 09/10/2014 the reply of aforesaid second show-cause notice dated 29/08/2014 was submitted in the office of the respondents. On the same day i.e. 09/10/2014 the respondents served a letter No. 5146/Enf./HSRP on the petitioner informing that its application filed for invocation of Clause-17 of the contract agreement to refer the matter for dispute resolution, has been rejected by holding that there is no dispute and invocation of the dispute resolution clause is totally misconceived and appears to be guided by preconceived notions with a direction to the petitioner to comply the direction given in the notice dated 29/08/2014. A liberty was granted to the petitioner to file reply to the last show-cause notice.

8. It is also the case of the petitioner that after receiving aforesaid third show-cause notice, dated 24/26-09-2014, it has given a letter dated 10/10/2014 to the respondents demanding evidence and documents, on which such show-cause notice was based, simultaneously, the prayer for extending the period of thirty days to file the reply of such notice was also made.

9. Subsequent to aforesaid, on behalf of the petitioner in third round of litigation, WP No. 6355/2014 challenging third show-cause notice dated 24-26/09/2014 and the said letter rejecting the application for invocation of the clause of dispute resolution was filed on 13/10/2014. Subsequent to filing this petition, on account

of violation of aforesaid earlier Court orders dated 05/08/2014 and 09/09/2014 by the authorities of the respondents, a Contempt Petition No. 716/2014 was also filed against the concerning officials. But, subsequently the same has been withdrawn as infructuous vide order dated 08/05/2015.

10. It is further stated that during pendency of aforesaid third writ petition viz. 6355/2014, on 15/10/2014 a technical team was deputed by the respondents to conduct inspection. Such technical team after inspection by its report, has confirmed that the server has been placed and established in the office of the Transport Commissioner, Gwalior. Such report is also annexed with the petition at Page Nos. 435- 436, Volume 2 of the Paper Book. Petitioner also got annual audit report carried out by AKS Information Technology Services Private Limited, which also confirmed that the server installed by the petitioner was capable of utilizing any web server running in public domain over Internet. Same is annexed at Page No. 400 of the aforesaid Paper Book. Aforesaid Writ Petition No. 6355/2014 was heard and disposed of vide order dated 17/10/2014 (Annexure P/37) with some observations and directions.

11. Aforesaid third writ petition was filed for issuance of writ of certiorari to quash the third show-cause notice dated 24-26/09/2014 and the aforesaid letter dated 09/10/2014 given to the petitioner in response to its letter dated 24/09/2014 for invocation of dispute resolution clause, stating that the same were not given in accordance with the procedures and terms of the contract agreement dated 21/01/2012. A prayer for issuance of writ of mandamus directing the respondents to allow the petitioner to operate the HSRP contract dated 21/01/2012 and to comply the orders of this Court dated 05/08/2014 and 09/09/2014. In addition to it, prayer for issuance of writ of mandamus directing the respondents to abide by Clause-17 of the contract agreement is also made. Apart from this, an additional prayer for prohibition and restraining the respondents from taking any coercive/adverse step/action against the petitioner in deviation of the terms of the contract was also made.

12. Subsequent to passing the aforesaid order and before approaching the petitioner to the authorities of the respondents under the aforesaid liberty to provide copies of requisite documents, on which third show-cause notice was based on the same day i.e. 17/10/2014 in utter violation of the procedure, the terms of the contract and the above-mentioned earlier orders of this Court, the contract was terminated by the respondents-authorities. Accordingly, in compliance of the order dated 17/10/2014 before considering the third show-cause notice, neither the copies of the concerning documents on which such notice was based, were provided to the petitioner nor proper opportunity to file the reply of such notice was given. The intimation of impugned order dated 17/10/2014 (Annexure P/1) terminating the contract unilaterally was given to petitioner on 21/10/2014 through e-mail. According to the termination order Annexure P/1, the contract was terminated on various grounds, stating that according to the terms and conditions the necessary infrastructure has not been

established by the petitioner across the State of MP to affix HSRP on the vehicles, the requisite server has not been established at the Headquarter of Transport Authority, Gwalior, after collecting the requisite fees from the owners of the vehicles, within the prescribed period HSRPs were not affixed on their vehicles and in this regard, delay of 7 to 777 days has been caused. On account of such non-affixation of HSRPs within the prescribed period even after taking the sum in advance, according to terms the sum of near about Rs. 10 crores had become payable as damages for such delay to the vehicle owners.

13. In further pleadings of the petition, the grounds of termination stated in the impugned order (Annexure P/1) have been categorically disputed and denied with the explanations to show that the petitioner has not committed any fault on its part. In this regard, a synopsis has also been filed and the same was stated in the written arguments filed on behalf of the petitioner.

14. Subsequent to filing the instant petition on 23/10/2014, vide order dated 30/10/2014 on the request of the petitioner, it was permitted to move the Secretary, Transport Department for invocation of Clause-17.1 of the contract agreement. In compliance of such order, the representative of the petitioner in a meeting with Principal Secretary of Transport Department on 05/11/2014 apprised him that as per terms the corrective measures had been taken on behalf of the petitioner. In this regard, a representation was also submitted on 07/11/2014. Subsequent to it, vide interim order dated 04/12/2014 in the instant petition, the Court has permitted the petitioner to affix the HSRPs on the vehicles in the following manner:--

" In this view of the matter, by way of interim relief, it is directed that the petitioner shall be at liberty to fix HSRP on the vehicles if the petitioner had received the amount for fixing HSRP from the owners of the vehicles in terms of the contract. The authorities of the Transport Department shall provide assistance to the petitioner in terms of the contract for fixing HSRPs on the vehicles which are already with the petitioner."

15. Subsequently, the Chief Secretary, State of MP has rejected the aforesaid proposal/representation of the petitioner submitted for amicable settlement vide order dated 17/12/2014 (Annexure R/2).

16. So far entertainability of this petition is concerned, it is stated that in spite of Clause-17 of the contract agreement which provides a remedy of dispute resolution through arbitration, in view of settled proposition, this Court has jurisdiction to entertain this petition and quash the impugned termination order, with a direction to the authorities to comply the terms of contract mentioned in Clause-17(1) to (3), the mechanism of dispute resolution and till the dispute is resolved, the petitioner be permitted to carry out the work under sub-clause (3) of Clause-17 of the contract agreement.

17. With the aforesaid pleadings and the case, the petitioner has come to this Court for issuance of the writs, as stated in the beginning part of this order.

18. In the return of the respondents, by admitting the execution of the aforesaid contract agreement dated 21/01/2012 between the parties, it is stated that subsequent to beginning the work, on account of violation of terms and conditions of the contract on the part of the petitioner, the aforesaid show-cause notices for termination of contract were given on the grounds stated in the same and pursuant to that, on consideration the contract has been terminated. In addition, it is stated that against termination order of the contract dated 17/10/2014 (Annexure P/1), the petitioner has an alternate forum for redressal of its dispute, thus the disputed questions relating to the facts involved in the petition could not be adjudicated by this Court under Article 226 of the Constitution of India.

19. It is also stated that in view of the availability of alternate forum of dispute resolution under Clause-17 of the contract agreement to the petitioner, this petition being not entertainable, deserves to be dismissed. It is further stated that in view of availability of such alternate forum of initially on listing the matter for admission before the Bench on first date, at the request of the petitioner it was extended a liberty to approach the appropriate authority of the respondents, i.e. the Principal Secretary, Transport Department for amicable settlement under Clause-17.1 of the contract agreement. Pursuant to such liberty, the petitioner had already been approached to the alternate forum with its representation and now after rejecting its representation by the competent authority, the petitioner has only remedy to challenge the termination order elsewhere before the appropriate forum but in any case, the petitioner did not have any authority to challenge the termination order before this Court by way of this petition under Article 226 of the Constitution of India.

20. Apart from the aforesaid, in response of other merits of the petition, it is stated that there is no dispute between the parties as defined under the provision of Motor Vehicles Act and its enacted rules or defined in the decisions of the Apex Court including the decision delivered in the matter of Maninderjit Singh Bitta (supra). The implementation of the scheme to affix HSRPs on the vehicles being mandatory, is necessary for the security of the vehicles as well as of the security of the citizens at large. In addition, it is stated that due to non-performance of the work by the petitioner in accordance with the contract, the entire public beneficiary scheme was jeopardized, for which the Hon'ble Supreme Court has issued direction from time to time for its effective implementation throughout the country. But due to activities of the petitioner, the entire object of such scheme has been frustrated and in such circumstances, the termination of the contract of the petitioner by the respondents is nothing else but is in the great public interest in order to ensure affixation of HSRPs on the vehicles through appointment of the fresh vendor.

21. In further pleadings of the return, it is stated that since the date of contract till issuance of show-cause notice, according to terms and conditions installation of main data server in the office of Transport Commissioner, Gwalior was not

installed and in such premises, possibility of misuse of the collected dates could not be ruled out. The petitioner only installed a sub-server in the office of the Transport Commissioner, Gwalior and used to transfer the data from the other main server located elsewhere to the sub-server of Gwalior. The same was found to be absolutely in breach of mandatory conditions of contract agreement and, therefore, the authorities of the respondents having found the said defects not cured despite repeated directions issued from time to time, ultimately, left with no option but to terminate the contract of the petitioner in greater public interest residing in the State of MP.

22. It is further stated that appointment of dealer was to be made by the petitioner across to the State to those persons who are qualified and having the qualifying certificate in accordance with the provisions contemplated under the Central Motor Vehicles Rules but the petitioner has appointed only 24 persons as dealers in the State of MP out of 50 Districts. In such premises, in more than half of the Districts of the State, no dealer was appointed. Out of appointed 24 dealers, some of them were found to be unqualified having no trade certificate in accordance with the provisions of aforesaid Central Motor Vehicles Rules. Such activities of the petitioner show that it had again failed to discharge the obligation under the contract. In the meeting dated 16/04/2014 representatives of the petitioner stated that within three months from such date they will appoint qualified dealers in all the fifty Districts, however, the facts remains that till date in compliance of such assurance no dealer has been appointed while the Hon''ble Supreme Court has categorically directed for appointment of qualified dealers in order to ensure affixation of HSRP on the vehicle before it come on the road. In support of such contention, the order passed by the Supreme Court in WP No. 16064/2012 (Annexure R/1), is also annexed. It is stated that the petitioner has not taken any pain to comply such direction of the Hon''ble Apex Court, so in such premises, termination of the contract of the petitioner is valid from each corner of law.

23. It is further stated that conduct of the petitioner while serving with the answering respondents remained absolutely unbelievable. In the meeting dated 16/04/2014, on behalf of the petitioner, certain certificates of different RTOs of different Districts were presented and on verification of the same, it was found that the same were fake documents, have not been signed by the concerning authorities of the RTOs. Such conduct of the petitioner- Firm in discharging the obligation in highly important scheme of the Government is a sufficient ground to terminate its contract.

24. According to the contract agreement with a view to ensure affixation of HSRP within stipulated period the provision was made under Clause-11.2 (c) of the agreement that within four days of receipt of fees of HSRP the petitioner was obliged to ensure affixation of HSRP and for delay, pay the rebate of Rs. 50/- per day upto seven days delay and thereafter, Rs. 75/- per day upto the date of installation to the vehicle owners. It has been found on verification by the

authorities that even after receipt of fees for affixation of HSRPs the same have not been affixed on near about Four to Five Lacs vehicles till date and in such circumstances, the petitioner was required to pay rebate of approximately Rs. 10 crores under the said agreement. But till today, not a single vehicle owner has been paid rebate under the said Clause. In such circumstances, it is stated that the continuation of the petitioner in the State as an agency to implement the scheme involving larger public benefit has rightly been not found to be in public interest by the competent authority and in such circumstances, the contract has rightly been terminated.

25. In addition, it is stated that during the course of consideration of the application of the petitioner filed under Clause-17.1 of the contract agreement it has come in the knowledge of the authority that the petitioner entered under sub-agreement with certain persons according to which additional money was agreed to be charged from the vehicle owners, contrary to the alleged scheme. In this regard, requisite documents are annexed as part of Annexure R/2 with the return.

26. It is further stated that the petitioner has even sold the machines, materials to the sub-contractors for affixation of HSRPs which is not permissible according to the terms and conditions of the contract and also in view of the direction issued by the Hon"ble Apex Court in the subject matter. Such information has also been given to the Hon"ble Supreme Court in response to some contempt proceedings initiated against the authorities of the respondents.

27. Apart from all these objections, para-wise reply of the petition has also been given and in such submission, the authorities have justified their act of issuance of aforesaid show-cause notices as well as rejection of the application of the petitioner filed for invocation of the arbitration clause for dispute redressal i.e. Clause-17 of the contract agreement. Inter alia, it is also stated that every action of issuance of show-cause notice as well as the decision of rejection of the application for invocation of the arbitration clause and of termination of contract have been taken by the authorities after supplying necessary evidence and documents to the petitioner, on which such notices and proceedings were based, so also after extending opportunity of hearing to the petitioner in accordance with the principle of natural justice and no fundamental rights of the petitioner have been violated by the authorities of the respondents in any manner. With these averments, the prayer for dismissal of the petition is made.

28. Ms Deeksha Mishra, learned counsel for the petitioner, after taking us through the aforesaid factual matrix stated in the petition, argued that the question of entertainability of the petition against the termination order of the contract dated 17/10/2014 does not require any consideration on merits again because in the first round of litigation while dealing with Writ Petition No. 3654/2014, after taking into consideration the principles laid down by the Apex Court in the matters of Jagdish Mandal Vs. State of Orissa and Others, (2008) 2 CTLJ 538 : (2007) 14 SCC 517 : (2006) 10 SCR 606 Supp and Union of India (UOI) and Others Vs. Tania Construction Pvt. Ltd., (2011) 2 ARBLR 115 : (2011)

5 JT 59 : (2011) 3 RCR(Civil) 821 : (2011) 4 SCALE 745 : (2011) 5 SCC 697 : (2011) 5 SCR 397 : (2011) 4 UJ 2210 , vide order dated 05/08/2014 this Court not only entertained the aforesaid earlier petition but after entertaining the same, had quashed the order dated 19/06/2014. In continuation, by referring to certain decisions of the Apex Court, she argued that in order to examine the sustainability, illegality and arbitrariness of the authorities of the respondents in taking the impugned decision and action, this Court has jurisdiction to entertain this petition filed under Article 226 of the Constitution of India. In further argument, she said that the manner in which the impugned termination order of the contract has been passed by the authorities of the respondents, it is not only contrary to the settled terms of the contract but it is also contrary to the orders and directions given by this Court in the orders passed in earlier petitions and pursuant to that, the same are not sustainable under the law. She further stated that in view of above cited decisions, this Court has jurisdiction to examine the matter and quash the impugned orders by allowing this petition. She has also submitted a compilation of the decisions cited by her in support of her arguments.

29. In continuation, while arguing the matter, by referring to Clause-15 of the contract agreement, she said that without complying such provisions of the scheme, the impugned termination order could not be passed by the authorities of the respondents and it is apparent fact that the respondents have not complied with the provisions contained in Clause-15 of the contract agreement. She further said that in the available circumstances, the show-cause notice on which the impugned order of termination of contract was passed itself was not legal because the same was given without annexing copies of the concerning documents and complaints of the owners of the vehicles or the documents which were referred in the last show-cause notice dated 24-26/9/2014. On filing reply of the second show cause notice on behalf of the petitioner on 09/10/2014, prayer for extension of time by thirty days to file reply of the third show-cause notice for termination of the contract with a further prayer to supply copies of such documents was made. However, the authorities of the respondents neither extended the time nor copies of the concerning documents were supplied. In this regard, challenging the aforesaid third show-cause notice, Writ Petition No. 6355/2014 was filed. In such writ petition, letter of the authority of respondent No. 2 dated 09/10/2014 informing the petitioner regarding rejection of his application dated 24/9/2014 filed for invocation of Clause-17 of the contract agreement relating to dispute resolution through arbitrator was also challenged. But, in view of the earlier orders dated 05/08/2014 and 09/09/2014 passed by this Court in the first and second rounds of litigation, pursuant to which the matter was sub judice before the authorities of respondents No. 1 and 2, instead of deciding such third Writ Petition No. 6355/2014 on merits, the same was disposed of on 17/10/2014 with a liberty and direction to the petitioner to approach the authorities to supply the aforesaid copies which were not supplied to the petitioner by the authorities of the respondents. Subsequent to this order, before approaching the petitioner to the authorities under the aforesaid liberty

and direction in spite of knowing the aforesaid bi-party order without supplying the copies of documents and also without considering the objections and the explanations submitted in response to first and second show-cause notices, so also without extending opportunity to file reply of third show-cause notice after supplying the copies of the documents which were the very foundation to issue third show-cause notice i.e., the copies of the complaints of the owners of the vehicles unilaterally and arbitrarily, had terminated the contract on the same day i.e., 17/10/2014 which was informed to the petitioner on 21/10/2014. In such premises, she said that the impugned termination order being passed in violation of the terms and conditions of the contract agreement, so also without following the principles of natural justice and contrary to earlier orders of this Court, is not sustainable and prayed to quash the impugned order dated 17/10/2014 (Annexure P/1), terminating the contract of the petitioner and the order rejecting the application of the petitioner filed to invoke the clause of the contract relating to the dispute resolution, with a further direction to the authorities of the respondents to consider the matter afresh after extending opportunity to file reply of the third show- cause notice after supplying copies of the concerning documents, along with a direction to the authorities of the respondents to invoke and comply the Clause-17 of the contract agreement regarding dispute resolution by allowing this petition. She also placed her reliance on the following reported decisions:--

"(i) The Branch Manager, Magma Leasing and Finance Limited and Another Vs. Potluri Madhavilata and Another, AIR 2010 SC 488 : (2010) 1 CompLJ 684 : (2009) 12 JT 385 : (2009) 12 SCALE 668 : (2009) 10 SCC 103 : (2009) 14 SCR 815 : (2009) 9 UJ 4335 ;

(ii) Hindustan Petroleum Corporation Ltd. v. Super Highway Service and Others, reported in (2010) 3 SCC 321;

(iii) Union of India (UOI) and Others Vs. Tantia Construction Pvt. Ltd., (2011) 2 ARBLR 115 : (2011) 5 JT 59 : (2011) 3 RCR(Civil) 821 : (2011) 4 SCALE 745 : (2011) 5 SCC 697 : (2011) 5 SCR 397 : (2011) 4 UJ 2210 ;

(iv) Bharat Petroleum Corporation Ltd. Vs. Jagannath and Company and Others, (2013) 5 AD 29 : (2013) 8 JT 282 : (2013) 5 SCALE 658 : (2013) 12 SCC 278 : (2013) AIRSCW 3600 ;

(v) AL Jazeera Steel Products Company SAOG Vs. MID India Power and Steel Ltd., AIR 2012 SC 2854 : (2012) 3 ARBLR 134 : (2012) 3 RCR(Civil) 679 : (2012) 5 SCALE 432 : (2012) 11 SCC 458 : (2012) AIRSCW 3166 ;

(vi) Swiss Timing Limited Vs. Organising Committee, Commonwealth Games 2010, (2014) AIRSCW 4958 : (2014) 7 JT 574 : (2014) 7 SCALE 515 : (2014) 6 SCC 677 ;

(vii) Today Homes and Infrastructure Pvt. Ltd. Vs. Ludhiana Improvement Trust and Another, (2013) 5 AD 565 : (2013) 2 ARBLR 241 : (2013) 3 BC 261 : (2013)

114 CLA 471 : (2013) 3 CompLJ 322 : (2013) 3 CTC 559 : (2013) 8 JT 13 : (2013) 3 RCR(Civil) 559 : (2013) 7 SCALE 327 : (2014) 5 SCC 68 ; and

(viii) Reva Electric Car Company P. Ltd. Vs. Green Mobil, AIR 2012 SC 739 : (2012) 106 CLA 1 : (2012) 4 RCR(Civil) 574 : (2011) 13 SCALE 169 : (2012) 2 SCC 93 : (2012) 1 UJ 224 : (2012) AIRSCW 472 ."

30. On the other hand, responding to the aforesaid arguments of the petitioner's counsel, Shri MPS Raghuvanshi, learned Additional Advocate General, by justifying the impugned termination order of the contract (Annexure P/1) as well as the order of the rejection of the application of the petitioner filed for invocation of the clause of dispute resolution, said that the same being passed on proper appreciation of the available circumstances as well as in accordance with the terms and conditions of the contract do not require any interference in this petition filed under Article 226 of the Constitution of India. In support of such contention, he has also referred the facts and circumstances stated in the reply. In further argument, he said that after termination of the contract by the impugned order, the petitioner has alternate forum for redressal of its grievance by invoking Clause-17 of the contract agreement and, therefore, this petition could not be entertained for the prayer made in the same. He further said that in the present matter, the authorities were not bound to comply Clause-15 of the contract agreement because considering overall circumstances according to which in spite of repeated intimations and directions material terms of the contract were not complied with by the petitioner to carry out the work of contract, hence, there was no option with the authorities except to invoke provisions of Clause-14 of the impugned agreement and terminate the contract and in such circumstances, after extending opportunity of hearing to explain the circumstances to the petitioner through show-cause notices when such explanation was not found to be satisfactory, then the contract was rightly terminated by the authorities of the respondents under Clause-14. He further said that in any case the authorities of the respondents are not bound to permit the petitioner to continue the contract work under Clause-17.3 of the contract agreement. He further said that the application of the petitioner dated 24/9/2014 submitted for invocation of dispute resolution under Clause-17 of the agreement has rightly been rejected by the authorities of the respondents. In the alternative, he said that in any case, such application was premature because the same was filed when the proceedings of the show-cause notices were pending for consideration and subsequent to passing of the termination order (Annexure P/1), no such prayer has been made on behalf of the petitioner, so in that respect also, the petitioner is not entitled to get any relief in the instant petition. He further said that copies of all the relevant documents referred or stated in the show-cause notices were given to the petitioner and such thing was admitted by the petitioner in the pleadings of the petition. He further argued that objection regarding non-supply of copies of the relevant documents on which the show-cause notices were issued was baseless. He further said that in the light of the decisions of the Apex Court directing the State authorities to implement the

scheme of HSRP as early as possible by time-bound schedule and in spite of intimation to the petitioner in this regard when no steps were taken by the petitioner to carry out the work in accordance with the terms of the contract by providing the infrastructure across the State of MP, then its contract has rightly been terminated. He further said that now as per the directions, State authorities have to make other arrangements for implementation of the scheme of HSRP. In support of his contentions, he also placed reliance on various reported decisions of the Apex Court and also filed compilation of such decisions. With these submissions, he prayed for dismissal of the petition. He also placed his reliance on the following reported decisions:--

"(i) State of Orissa and Others Vs. Bhagyadhar Dash, AIR 2011 SC 3409 : (2011) 3 ARBLR 139 : (2011) 112 CLT 648 : (2012) 1 CTC 778 : (2011) 7 JT 283 : (2012) 1 RCR(Civil) 160 : (2011) 7 SCALE 71 : (2011) 7 SCC 406 : (2011) 8 SCR 967 : (2011) AIRSCW 5303 ;

(ii) Krishan Lal Vs. Food Corporation of India and Others, (2012) 3 SCALE 27 : (2012) 4 SCC 786 : (2012) AIRSCW 1621 : (2012) 2 Supreme 260 ;

(iii) Maninderjit Singh Bitta Vs. Union of India (UOI) and Others, (2011) 4 JT 383 : (2011) 2 RCR(Civil) 733 : (2011) 4 SCALE 435 : (2012) 1 SCC 707 : (2011) 5 SCR 142 : (2012) 2 TAC 7 : (2011) 2 UJ 1500 ;

(iv) GAIL (India) Limited Vs. Gujarat State Petroleum Corporation Limited, (2013) 10 AD 187 : (2013) 11 SCALE 518 : (2014) 1 SCC 329 ;

(v) The Empire Jute Co. Ltd. and Others Vs. The Jute Corporation of India Ltd. and Another, (2007) 4 ARBLR 74 : (2007) 12 JT 391 : (2007) 11 SCR 388 ;

(vi) S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc., (2010) 2 JT 185(1) : (2010) 2 SCALE 232 : (2010) 3 SCC 353 : (2010) 2 SCR 586 ;

(vii) Bishnu Ram Borah and Another Vs. Parag Saikia and Others, AIR 1984 SC 898 : (1983) 2 SCALE 1231 : (1984) 2 SCC 488 : (1984) 1 SCR 825 : (1984) 16 UJ 417 ;

(viii) Association of Registration Plates Vs. Union of India (UOI) and Others, AIR 2005 SC 469 : (2005) 1 CTC 111 : (2005) 1 CTLJ 14 : (2004) 10 JT 147 : (2004) 10 SCALE 60 : (2005) 1 SCC 679 : (2004) AIRSCW 7074 : (2005) 1 Supreme 700 ;

(ix) State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., (1996) 6 AD 621 : AIR 1996 SC 3515 : (1996) 7 JT 395 : (1996) 6 SCALE 168 : (1996) 6 SCC 22 : (1996) 4 SCR 762 Supp : (1997) 104 STC 78 ;

(x) The Branch Manager, Magma Leasing and Finance Limited and Another Vs. Potluri Madhavilata and Another, AIR 2010 SC 488 : (2010) 1 CompLJ 684 : (2009) 12 JT 385 : (2009) 12 SCALE 668 : (2009) 10 SCC 103 : (2009) 14 SCR 815 : (2009) 9 UJ 4335 ;

(xi) Delhi Gate Auto Service Station and Others Vs. B.P.C.L. Agra th. Sr. Div. Manager and Others, (2009) 8 SCALE 810 : (2009) 16 SCC 766 ;

(xii) State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., AIR 2002 SC 206 : (2001) 3 ARBLR 686 : (2001) 9 JT 582 : (2001) 8 SCALE 250 : (2002) 1 SCC 216 : (2001) AIRSCW 4858 : (2001) 8 Supreme 334 ;

(xiii) Tata Finance Limited v. Ajay Kumar Biswal and Others, reported in (2000) 9 SCC 238;

(xiv) A.S. Motors Pvt. Ltd. Vs. Union of India (UOI) and Others, (2013) 3 AD 620 : (2013) 2 CTC 804 : (2013) 3 JT 316 : (2013) 2 RCR(Civil) 323 : (2013) 3 SCALE 15 : (2013) 10 SCC 114 ."

31. Having heard counsel at length, keeping in view their arguments, we have carefully gone through the pleadings of the parties as well as the annexed documents so also the case-laws cited on their behalf.

32. Before proceeding further to examine merits of the case, we deem fit to consider first the question of entertainability of this petition whether in the available factual matrix of the matter stated above after passing of the impugned termination order (Annexure P/1) in view of availability of dispute resolution forum to the parties under Clause-17 of the contract agreement, this court has jurisdiction to entertain this petition to quash the impugned order. Thus, we proceed first to consider such question.

33. In order to answer the aforesaid question before proceeding further, we would like to reproduce the relevant principle laid down by the Apex Court on such question on which earlier petition of the petitioner was entertained.

(i) In the matter of Jagdish Mandal (supra), it was held as under:--

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial

review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

(ii) The aforesaid question was also considered and answered by the Apex Court in the matter of Tania Construction (supra). The same reads thus:

""33. Apart from the above, even on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.""

34. At this stage, we would like to reproduce the provisions of Clause 15.3 of the contract agreement. The same reads as under:

"15.3 Termination

(a) The Authority shall have the right to cancel the Contract if the Service Provider causes any material breach of any or all conditions or any material breach of the Contract. Material breach of contract shall include, but is not limited to the following:

I. Failure of the Service Provider to correct such defects/irregularity within a reasonable period of time pursuant to the notice received from the Transport

Commissioner, Gwalior. If defects/irregularities are noticed repeatedly or there are repeated complaints against the Service Provider, the Transport Commissioner shall have the right to terminate the contract and forfeit the Performance Security;

II. Upon the Service Provider being knowingly or intentionally involved in distribution of duplicate High Security Registration Plates without authority letter from the Registering Authority and/or are leaking the security features;

III. Failure of the Service Provider to submit valid Certificate of "Conformity of Production" periodically as per the guidelines of the approved Test Agency, to the Authority;

IV. Any document submitted by the Service Provider as part of the bid is found to be incorrect/not authentic;

V. In case there are complaints of overcharging/poor quality of High Security Registration Plates.

(b) In case of material breach of the contract by the Service Provider for any of the above reasons, the Authority shall have the right to terminate the contract and enforce the Performance Security. No Termination Payment shall be made by the Authority to the Service Provider in the event of such Termination.

(c) Further, The Authority shall also reserve the right to impose penalty and ask the Service Provider to continue till alternative arrangements are made and also reserves the right to enter into contract with any one as deemed fit by the Authority. The Service Provider shall handover reports and databases maintained to the Authority for continuity of operations. In no case, such data/information maintained by the Service Provider shall be exploited or sold to third party for any gain or otherwise.

(d) Upon Termination of this Contract for any reason, whatsoever;

I. The Service Provider shall remove all its machinery, equipment, furniture, fixtures or any other belongings excluding the computing equipment set up to establish and maintain the Online Data Warehouse within a period of 30 (thirty) days; and

II. The Service Provider and any person claiming through or under the Service Provider shall not enter any part of the premises of any Registering Authority beyond a period of 30 (thirty) days from the date of Termination Notice.

(e) Notwithstanding anything to the contrary contained in this Contract, any Termination pursuant to the provisions of this Contract shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies, which it may have in law or Contract. All rights and obligations of either Party under this Contract shall survive the termination of this Contract to the extent such survival is necessary for giving effect to such rights and obligations.

(f) On termination the Service Provider shall:

I. Pass on IPR and software alongwith the Source Code to Transport Commissioner, Madhya Pradesh.

II. Handover the possession of all computing equipment, data asset to Transport Commissioner, Madhya Pradesh;

III. Hand over the possession of premises provided by the Registering Authorities to the Service Provider for affixation of plates on motor vehicles;

IV. Clear all charges for utilities like electricity, water etc. in respect of the premises provided by the Registering Authorities.

(g) The Authority shall be at liberty to appoint any other manufacturer/vendor to manufacture, sell, distribute or affix high security registration plates after termination of this Contract."

35. In view of the aforesaid cited decisions of the Apex Court and of the condition/the clause of the contract agreement, in the available factual matrix of the case, if the case at hand is examined, then it is an undisputed fact that contract for affixing HSRP on the vehicles in whole of the State of M.P. was given to the petitioner by the authority of the respondent No. 2. Pursuant to such contract, the petitioner has established its infrastructure in the State to implement the HSRP scheme. The petitioner has also appointed certain dealers and also employed some persons to carry out such work, but as per the allegations of the respondents authorities, in terms of the contract the petitioner has not established the infrastructure in whole of the State and has also not complied with some other terms of the contract agreement, on which as per available record first show-cause notice dated 5.2.1014 was given on behalf of authorities of the respondents to the petitioner vide Annexure P/7. The same was replied by Annexure P/8 on behalf of the petitioner on 22.3.2014. After filing of such reply, a review meeting was held between the petitioner and authorities of the respondents on 16.4.2014, wherein certain corrective measures were agreed to be taken for smooth implementation of the scheme and the respondents had given three months" time to the petitioner to cure such deficiencies. Simultaneously, a decision to constitute a monitoring cell was also taken between the parties. Minutes of such review meeting are evident on record as Annexure P/9. As per case of the petitioner, some corrective measures in compliance of the decision of the aforesaid review meeting dated 16.4.2014 were taken by the petitioner up to 27.5.2014. Such thing was acknowledged by authorities of the respondents and a monitoring cell was also constituted vide proceedings dated 7.6.2014 (Annexure P/12). Thereafter, the petitioner was intimated about holding of meeting of monitoring cell on 17.6.2014 and on reaching the representatives of the petitioner at Bhopal to attend such meeting, the same was cancelled on 17.6.2014 and the petitioner company was again intimated regarding such meeting scheduled on 20.6.2014. Such intimation was received at the end of the petitioner on 18.6.2014 vide Annexure P/14. But it is apparent from the record

that before holding such meeting on 20.6.2014, on 19.6.2014 the petitioner submitted a detailed report in respect of implementation of the decisions taken in the aforesaid review meeting held on 16.4.2014. In spite of filing aforesaid detailed report, the meeting scheduled on 20.6.2014 was unilaterally cancelled by the respondents and intimation to that effect was sent to the petitioner on 19.6.2014 through an e-mail at 11.00 p.m. vide Annexure P/17 and the contract was also unilaterally terminated by the authorities of the respondents.

36. In the aforesaid premises, it is apparent that before expiry of three months" time settled in meeting dated 16.4.2014, the contract was unilaterally terminated by the respondents-authorities on 19-06-2014, on which in the first round of litigation on behalf of the petitioner W.P. No. 3654/2014 (Annexure P/15) was filed on 21.6.2014 for quashment of the termination order dated 19-06-2014 stating it to be illegal and arbitrary alongwith some other reliefs. Initially, such petition was entertained and notices of the same were issued to the respondents and simultaneously by the interim order, stay against invocation of bank guarantee furnished by the petitioner was also given. In presence of the respondents-authorities such petition was considered and decided vide order dated 5.8.2014 (Annexure P/17), whereby answering the question of entertainability of the petition in the light of the aforesaid cited dictum of the Apex Court, the same was held to be entertainable and on merits, the aforesaid termination order of contract dated 19.6.2014 was quashed with some other directions. The same are read as under:--

"(i) That the impugned order Dt. 19.06.2014 (Annexure P/18) issued by the respondent No. 2 regarding termination of contract of the petitioner is hereby quashed.

(ii) The respondents are given liberty to issue fresh show cause notice or they can insist the earlier show cause notice given to the petitioner and the petitioner is also given a liberty to reply show cause notices and rebut the charges and the respondents are further given liberty to verify the fact that whether the petitioner produced any forged document or committed forgery. The respondents are also at liberty to pass a fresh order if they think it necessary in regard to termination of contract if it is necessary within a period of three months.

(iii) Up to that period the petitioner is permitted to continue the work as per the terms of the contract in regard to fixing of HSRP. The representatives of the department shall supervise the work of the petitioner. If it is found that the petitioner has not performed the work up to the satisfaction of the department during the aforesaid period, the department shall be at liberty to impose penalty as per the terms and conditions of the contract."

37. It is apparent from the aforesaid order dated 5.8.2014 that after quashment of the termination order dated 19.6.2014 (Annexure P/18 in W.P. No. 3654/2014), liberty was extended to the respondents to issue fresh show-cause notice or in the alternative to insist the earlier show-cause notice given to the

petitioner and pursuant to it, the petitioner was also given liberty to reply to show-cause notice and rebut the charges and a further liberty was given to the respondents to verify the fact whether the documents submitted by the petitioner are forged, with further liberty to pass a fresh order within three months, if necessary. Accordingly, by the aforesaid directions three months' time was fixed to file the reply of the show-cause notice by the petitioner and to consider the matter afresh by the authorities and meanwhile, the petitioner was permitted to continue the work as per terms of the contract to affix the HSRP on the vehicles. Simultaneously, it was also observed that the work of the petitioner shall be supervised by the representatives of the respondents- Department with further observation and if it is found that the petitioner has not performed the work upto the satisfaction during the aforesaid period, then respondents shall be at liberty to impose penalty as per terms and conditions of the contract. In view of the aforesaid in nutshell, it is apparent that by the aforesaid order dated 5.8.2014, three months period was fixed to file the reply of show-cause notice and to consider and decide the matter afresh by the authorities and till then, the petitioner was permitted to carry out the work according to the contract.

38. Although as per the case of the respondents authorities, as submitted by their counsel, in compliance with the aforesaid directions of the order dated 5.8.2014, requisite contract work was not carried out by the agency of the petitioner, while as per case of the petitioner requisite cooperation with necessary direction to the office of the respondent authorities of all over the State to co-operate the petitioner in carrying out the contract work was not given. So, in the lack of such instructions, the concerning RTOs did not allow the petitioner to carry out the HSRP collection and affixation of the same. Although in this regard a letter dated 25.8.2014 (Annexure P/18) was sent by the authorities of the respondents to the RTOs of the State but in that letter also no specific instructions in this regard were given. Subsequent to issuing aforesaid letter to the RTOs informing them about restoration of the contract agreement dated 21.1.2012 only after four days contrary to the terms settled in the meeting dated 16.4.2014, so also contrary to the order dated 5.8.2014 passed by this Court in WP 3654/2014 a second show-cause notice dated 29.08.2014 (Annexure P/20) for termination of contract was given to the petitioner by the authorities of the respondents. It is apparent from the record that such second show-cause notice dated 29.8.2014 was given to the petitioner before expiry of the period fixed by this court vide order dated 5.8.2014 in W.P. No. 3654/2014 to consider the matter and pass the fresh order.

39. Said second show-cause notice was challenged on behalf of the petitioner in the second round of litigation on 2.9.2014 through W.P. No. 5409/2014. In such writ petition prayer for quashment of the aforesaid notice was made by stating the same to be mala fide with preconceived notions and in violation of the aforesaid order dated 5.8.2014 passed by this Court. The period of ten days granted by the authorities of the respondents to file reply to the second show-cause notice being short was also challenged. In presence of the parties, such

petition was considered and decided vide order dated 9.9.2014 (Annexure P/23). The operative para of such order reads as under:--

"The petition is disposed of with the following observations/directions:--

(i) Thirty days" time is granted to the petitioner to reply the show cause notice from the date of passing of this order.

(ii) If no order of cancellation of contract be communicated by the government to the RTOs, this order be treated as communication and the petitioner is at liberty to submit a photo copy of this order to the concerned RTO.

(iii) The petitioner is at liberty to invoke the mechanism of dispute resolution in accordance with the terms and conditions of contract mentioned in Article 17 of the contract agreement as mentioned above."

40. It is apparent from the aforesaid order that thirty days" time was granted to the petitioner to file the reply to the second show-cause notice from the date of passing of the aforesaid order and according to second part of the order, it was observed that if the order is not communicated by the Government to the RTOs, then the order of the Court be treated as communication and the petitioner-company is at liberty to supply photo copy of the order to the RTOs.

41. Subsequent to passing of the aforesaid order dated 9.9.2014, in which thirty days" time was given to the petitioner to file reply of the second show cause notice with liberty to invoke the mechanism of dispute resolution in accordance with Clause 17 of the contract agreement, on behalf of the petitioner an application for invocation of mechanism of dispute resolution according to Clause-17 of the contract agreement was filed in the office of the authorities of the respondents. But soon after filing such application or simultaneously before expiry of thirty days" period fixed by the court to file reply to the second show cause notice, third show cause notice dated 24-26/9/2014 (Annexure P/26) was given on behalf of the respondents authorities to the petitioner for termination of the impugned contract. It is apparent from the record that on behalf of the respondents any inquiry report submitted by the representatives of the respondents in compliance of the order of this Court dated 5.8.2014 stated above has not been placed on record. It is also apparent that before expiry of thirty days" period fixed by this court vide order dated 9.9.2014 in W.P. No. 5409/2014 aforesaid third show-cause notice for termination of the contract was given to the petitioner.

42. On 9.10.2014, while submitting the reply to the second show-cause notice on behalf of the petitioner an application with a prayer to supply the copies of the concerning documents/evidence, on which third show-cause notice was based, as the copies of such complaints given by the vehicle owners were not delivered to the petitioner alongwith the third show cause notice, and extending the period of thirty days" to file reply of such third show-cause notice was also filed.

43. Apart the above, on the same day i.e. 9.10.2014, the petitioner was

informed by the authorities of the respondents through letter that its application dated 24.9.2014, filed for invocation of dispute resolution mechanism under Clause-17 of the contract agreement, has been rejected by holding that there is no such dispute which requires invocation of dispute resolution. In the above-mentioned circumstances, it is apparent that in spite of making demand on behalf of the petitioner copies of the concerning evidence and of complaints, given by the owners of the vehicles to the State authorities against the petitioner that in spite of depositing sums within the prescribed period HSRP has not been affixed by the petitioner on their vehicles and in that regard requisite sums of the damages have not been given by the petitioner to such vehicle owners, have not been given to the petitioner and without extending sufficient opportunity to file reply to third show-cause notice, on the grounds stated in such show-cause notice also the authorities of the respondents were making efforts to terminate the contract. So, the petitioner again came to this Court on 13-10-2014 in the third round of litigation with Writ Petition No. 6355/2014. Inter alia in such petition, prayer for quashment of the third show-cause notice dated 24-26/9/2014 as well as aforesaid letter dated 9.10.2014 intimating the petitioner regarding rejection of his application filed for invocation of Clause-17 of the contract agreement for dispute resolution by proposing the name of Arbitrator Justice Usha Mehra as Arbitrator with further prayer for appropriate directions to the authorities of the respondents to permit the petitioner to carry out the work of contract, with a further prayer of direction to invoke Clause 17 of the contract agreement according to its spirit, were made. In presence of the parties, on 17/10/2014 such WP No. 6355/2014 has considered and in view of pendency of the matter before the authorities of the respondents in compliance of the earlier directions of this Court dated 5/8/2014 and 9/9/2014 instead of deciding the writ petition on merits, the same was disposed with the following observations and directions:--

"It appears that the matter has already been pending for consideration before the competent authority. Hence, at this stage, in our opinion, it would not be appropriate to interfere in the process which is going and the matter is resting with the respondents/competent authority. If the petitioner has any grievance in regard to non-supply of the documents to the petitioner then the petitioner can very well approach the authority and the authority concerned expected to do the needful to the petitioner in accordance with law."

44. As per case of the petitioner, after passing of the aforesaid order under the observations and the liberty given in such order, before approaching the petitioner to the authorities of the respondents with a prayer to supply the copies of evidence and documents on the same day on which the order was passed by this Court, i.e. 17/10/2014 without following the directions given by this Court in the earlier orders, so also without holding any enquiry or extending any opportunity of hearing after supplying copies of the necessary documents to the petitioner, so also without considering the reply and explanation of the petitioner given in the reply of earlier show-cause notices, the contract has been

unilaterally terminated by the authorities of the respondents on 17/10/2014 and its intimation was given to the petitioner at belated stage on 20/10/2014. Accordingly, the contract was terminated illegally and in an arbitrary manner so also without following the procedure prescribed under the law and contrary to the principles of natural justice and the existing legal position settled in the above-mentioned quoted decision of the Apex Court.

45. In view of the aforesaid, it is apparent that initially some deficiencies in the work, carried out by the petitioner, was alleged by the respondents in the month of February, 2014 and first show cause notice was issued by the authorities of the respondents to the petitioner. Point-wise reply of the notice was submitted by the petitioner in the office of the authorities of the respondents. Subsequent to it, a joint meeting was held on 16/4/2014 and in such meeting, the parties had agreed that such alleged deficiencies shall be cured within three months and a monitoring cell would also be constituted. Pursuant to it, on 27/5/2014 some report about the deficiencies cured was filed by the petitioner in the office of authorities of the respondents. Subsequent to that, on 7/6/2014 the respondents acknowledged initiation of the corrective measures and also constituted a monitoring cell and thereafter a meeting of the monitoring cell was scheduled on 17/6/2014. But in spite of reaching representatives of the petitioner at Bhopal to attend such meeting, the same was cancelled on behalf of the respondents authorities and the same was rescheduled for 20/6/2014 vide notice dated 18/6/2014. Meanwhile, a detailed report in respect of implementation of the decisions taken in the meeting dated 16/4/2014 (Annexure P/17) was filed on behalf of the petitioner in the office of the respondents on 19/6/2014. In spite of that, for the reasons best known to the respondents authorities, such scheduled meeting of 20/6/2014 was also cancelled and in the meanwhile, on 19/6/2014 the alleged contract was unilaterally cancelled before expiry of three months period as settled and fixed in the meeting of 16/4/2014.

46. Challenging the aforesaid termination order dated 19/6/2014 by the petitioner through first writ petition 3654/2014, on consideration such termination order was quashed by this Court in such petition vide order dated 5/8/2014 by extending the liberty to the respondents to issue a fresh show-cause notice or to insist the same and three months period was fixed in that regard as stated above. Simultaneously, till such period the authorities of the respondents were directed to permit the petitioner to carry out the work of contract with some further directions. But, it is apparent that the concerning RTOs were not informed upto 25/8/2014 and even on giving intimation dated 25/8/2014 to the RTOs, they were not informed to permit the petitioner to continue the work or in any case, the petitioner was not permitted by the RTOs to carry out the work according to the direction. Requisite slips were not issued by the RTOs to the petitioner and in such premises, the petitioner could not carry out the work of contract and contrary to the directions of this Court and only after four days vide dated 29-08-2014, the another show-cause notice (Annexure P/20) for termination of the contract was issued by the authorities of the

respondents to the petitioner.

47. Such subsequent show-cause notice dated 29/8/2014 was challenged on behalf of the petitioner in the second round of litigation on 2/09/2014 through Writ Petition No. 5409/2014 on the ground and allegations that the same has been issued without making any enquiry and contrary to the aforesaid earlier directions of this Court with mala fides and preconceived notions. In presence of the parties, such petition was considered and decided vide order dated 09/09/2014, extending the period of one month to the petitioner to file reply of such show-cause notice, some other directions were also given to the respondents as well as to the petitioner. In compliance of such directions, within 30 days the petitioner had to file reply of the show-cause notice and was also at liberty to file an application for invocation of the Clause-17 of the contract relating to dispute resolution. Pursuant to that, the petitioner filed such application on 24-09-2014 and as per settled proposition, once an application for invocation of dispute resolution is filed then the same is remained in existence and subsequent fresh application to invoke such clause is not necessary. Even then, such application was rejected and its intimation was given to the petitioner vide communication dated 09/10/2014.

48. Apart from the aforesaid, before expiry of period of thirty days to file reply of the second show-cause notice extended by the Court vide order dated 09/09/2014, contrary to that third show-cause notice dated 24/26-09-2014 during pendency of proceeding of the second show-cause notice, was issued to the petitioner by the authorities of the respondents and only ten days time was given to file reply of the same, while for filing reply of the second show-cause notice, thirty days time was granted by this Court vide its aforesaid earlier order dated 9.9.2014. In spite of making requests on behalf of the petitioner, copies of the requisite documents and complaints of the owners of the vehicles were neither supplied to the petitioner nor the period of ten days to file reply of such third show cause notice was extended. In such premises, the petitioner has been deprived by the authorities of the respondents to file proper reply of such notice to defend the matter before the authorities.

49. On issuance of said third show cause notice, the petitioner came to this Court in Writ Petition No. 6355/2014 for quashment of the aforesaid third show-cause notice as well the order of rejection of its application of invocation of dispute resolution clause of the contract agreement alongwith some other reliefs. After filing such petition on 13/10/2014 as per available record some inspection of the site regarding compliance of installation of the server at the office of respondent No. 2 was made by the appropriate authorities on 15/10/2014 and it was found that the server, installed at the Headquarter of the Transport Commissioner, Gwalior is in working condition. Such fact was acknowledged by the authorities of the respondents but while terminating the contract on such ground such aspect has not been considered. The aforesaid Writ Petition No. 6355/2014 vide order dated 17-10-2014 was considered and disposed of by the Court, keeping in view

pendency of the proceedings of second show-cause notice before the authorities and in such premises, instead of entertaining and deciding such petition on merits, the same was disposed of with some directions and observations, so also by extending liberty to the petitioner to approach the authorities of the respondents to supply the copies of the concerning documents and evidence on which such last show-cause notice was based. But, it is apparent that on the same date on which the aforesaid order was passed by this Court in the writ petition i.e. 17/10/2014, before approaching the petitioner to the authorities of the respondents under the extended liberty to supply the copies of the documents and evidence, so also before filing reply of third show-cause notice, the authorities of the respondents had terminated the works contract of the petitioner dated 21/01/2012 on the same day 17-10-2014.

50. In the aforesaid premises, it is apparent that not only contrary to the provisions of law, procedure and spirit of the contract agreement but also contrary to the directions and observations given by this Court vide orders dated 05/08/2014, 09/09/2014 and 17/10/2014 the authorities of the respondents had terminated the impugned contract illegally in arbitrary manner without extending the opportunity of hearing to the petitioner in accordance with the principles of natural justice while dealing with show-cause notices given to the petitioner for termination of the contract.

51. In view of the decisions of the Apex Court in the matters of Jagdish Mandal and Tantia Construction Private Limited (supra), whenever any authority takes a decision in an arbitrary manner to the established procedure and principle of law then such act of the authority being mala fide and arbitrary in spite the availability of the forum of arbitration by invoking the clause of dispute resolution could be subject matter of review. Thus, in the available circumstances discussed above, the act of the respondents terminating the contract of the petitioner being arbitrary, is not sustainable under the law. In such premises, the impugned order Annexure P/1 deserves to be quashed with some observations and directions.

52. Although some of the reported decisions of the Apex Court have been referred on behalf of the respondents by the learned Additional Advocate General in support of his contentions, but in the available factual matrix of the matter, in the light of the proposition and principle laid down by the Apex Court in the matters of Jagdish Mandal and Tantia Construction Private Limited (supra), the case-laws cited on behalf of the respondents- authorities being distinguishable on facts with the case at hand, are not helping the respondents.

53. Apart from the aforesaid, after going through the second show-cause notice issued by the authorities of the respondents and its reply filed on behalf of the petitioner, it is apparent that point-wise reply of the show-cause notice was submitted on behalf of the petitioner in compliance of the directions of this Court dated 05.08.2014. As per prescribed procedure such objections should have been considered by the authorities before passing termination order in a speaking manner, but it is apparent that the explanations put forth on behalf of

the petitioner in its reply to the second show-cause notice were not considered with proper approach by the authorities of the respondents before termination of the contract. It is apparent from the record also that every irregularity of performing the contract was thrown on the shoulders of the petitioner. While considering such objections the entire scheme in the light of the various decisions of the Apex Court delivered from time to time to implement the scheme of HSRP and the direction given for removal of deficiency was to be taken in consideration by the authorities but the same was not taken into consideration while passing the impugned order Annexure P/1.

54. It is expected from the authorities that whenever any administrative or departmental order is passed by them, then the same should be passed in a speaking manner after taking into consideration all the relevant facts and circumstances available. In spite of making efforts we have not found any record with the return of the respondents to show that after giving contract to the petitioner how many requisite slips to affix HSRP were issued by the RTOs to the petitioner and out of them how many HSRP have been affixed. We have also not found the list of those vehicle owners from whom the advance money was taken by the petitioner and HSRP was not affixed on their vehicles. The account of the sum of alleged damages has also not been placed on behalf of the respondents alongwith their return; only approximate amount of Rs. 10 crores has been stated by the authorities of the respondents. In fact on giving the show-cause notices on the aforesaid grounds also then copies of all such documents should have been supplied to the petitioner to enabling it to file proper reply of such allegations.

55. In view of the aforesaid discussion, this writ petition is allowed in part with the following terms and directions:

"(1) That, the impugned order dated 17.10.2014 (Annexure P/1) terminating the contract of the petitioner and the impugned communication dated 09.10.2014 informing the rejection of the application of the petitioner dated 24.09.2014 submitted for invocation of dispute resolution as per Clause-17 of the contract agreement, are hereby quashed.

(2) The authorities of the respondents are hereby directed to reconsider the matter of show-cause notices after supplying the copies of the aforesaid documents and evidence the very foundation of the third show-cause notice dated 24/26-09-2014 and by extending opportunity of 30 days to the petitioner to file reply of the same, also by taking into consideration the reply of the petitioner filed in response to the second show-cause notice dated 29/08/2014.

(3) Subject to aforesaid consideration, the authorities of the respondents shall be at liberty to pass a fresh order in respect of termination of impugned contract, if necessary. However, such an exercise would be completed by the authorities of the respondents within three months.

(4) Upto the aforesaid period in which proceedings shall be carried out by the

respondents- authorities in compliance of aforesaid directions, such authorities shall permit the petitioner to continue work of the contract to affix HSRP on the vehicles. Pursuant to it, authorities of the respondents are also directed to inform all the concerning R.T.O. offices across the State in this regard within seven days, otherwise copy of this order shall be treated to be communication of the same to such offices.

(5) Petitioner-company shall be at liberty to invoke mechanism of dispute resolution in accordance with the terms and conditions of the contract agreement mentioned in Clause 17.1 to 17.3 in continuation of its aforesaid application dated 24-09-2014 and the authorities of respondents are also directed to consider such prayer of the petitioner as per Clause 17 of the contract agreement."

There shall be no order as to the costs.