
(2019) 07 JH CK 0105

In the Jharkhand High Court

Case No : Writ Petition (c) No. 6155 Of 2017

M/s KEM & PCR Joint Venture firm

APPELLANT

Vs

Central Coalfields Limited And Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Income Tax Act, 1961 — Section 40A(2)(b)
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0105

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Atanu Banerjee, Amit Kumar Das

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India, whereby the petitioner has prayed for quashing of the order of cancellation of contract, forfeiture of EMD and debarring business for a period of three years which has been passed vide order dated 13.09.2017 by General Manager (Operation), Central Coalfield Limited, Magadh-Amrapali Area as also for quashing the corrigendum issued under the signature of General Manager dated 14.09.2017, whereby and whereunder correction made in the order for cancellation of contract, forfeiture of EMD and debarring business for a period of three years by certain corrections in the penal action no.3 contained in the said letter dated 13.09.2017 has been modified to be read as

"(3) to debar M/s KEM & PCR Joint Venture Firm, M/s Khandelwal Earth Movers and M/s Punya Coal Roadlines for a period of three years from participating in further tenders of CCL in individual capacity or as Joint Venture" and 'Deleted' penal action no.4 contained in the said letter dated 13.09.2017, the other content of the said letter dated 13.09.2017 remained unchanged and consequently the respondent may be directed to refund/release the earnest money deposited of Rs.50,19,700/- made by the petitioner and to lift/recall the

bar imposed upon M/s Khandelwal Earth Movers and M/s Punya Coal Roadlines, besides the petitioner-firm from participating in future tenders of CCL in individual capacity for a period of three years.

2. The brief facts of the case as per the pleading made in the writ petition is that, the petitioner is a joint venture firm constituted in pursuance of joint agreement between M/s Khandelwal Earth Movers and M/s Punya Coal Roadlines, participated in e-Tender Notice issued dated 31.08.2016 inviting online tenders from the experienced contractors having digital signature certificates for the work of loading and transportation of ROM Coal from proposed coal stock of Sainik Patch of Magadh OCP to Dump Hopper CHP-CPP, Piparwar for a period of three years. The general terms and conditions governing contractual transportation and loading in the areas of Central Coalfields limited in the case in the said tender notice. The petitioner being eligible in the requisite criteria in terms of e-Tender Notice dated 31.08.2016 participated in the same by submitting its bid along with required earnest money deposit.

The LOA is for award of the work amounting to Rs.13,468,50 lacs for the work of "loading and transportation of ROM Coal from proposed coal stock of Sainik Patch of Magadh OCP to Dump Hopper CHP-CPP, Piparwar including water sprinkling and dust suppression along with transport road for a period of three years" issued vide order dated 18.01.2017 and thereafter vide letter dated 25.01.2017 the petitioner had requested the Staff Officer (Mining) the quantity of coal which would be given to the petitioner for transportation and accepted by the respondents Coal Handling Plant at Piparwar, so that the petitioner can move its fleet accordingly because the fleet required to be brought from Maharashtra. While stating that the performance security amount will be deposited within stipulated time before 14.02.2017, the petitioner again wrote letter dated 02.02.2017, referring to the aforesaid letter dated 25.01.2017 again requested the Staff Officer (Mining) to inform the quantity of coal to be given for transportation and to be accepted by CHP, Piparwar but the respondent did not reply. Meanwhile, on visiting the site the petitioner learnt that various issues for road clearance from various villagers are yet to be settled with by the respondent company-CCL since there is no motorable road. The petitioner firm again vide letter dated 01.03.2017, 07.03.2017 and 15.03.2017 addressed to the Staff Officer (Mining), of the General Manager requested for looking into the matter and in the meanwhile he has also deposited performance guarantee amount to the tune of Rs.2,24, 47,500/ besides earnest money of Rs.50,19,700/ within the stipulated period.

It is the case of the petitioner that all infrastructure has been created for executing the work but due to lapse on the part of the respondent authorities, the work could not have been completed in spite of all necessary efforts but having not considered so when the work has not been commenced, the respondent authorities invoking the provision as contained under Clause 6.1 of the GTC has issued 15 days' notice for asking to the petitioner contractor to

commence the work, failing which to forfeit the earnest money deposited by him and additionally the company will reserve the right to debar such contractors for a minimum period of one year but the work could not have been started, as according to the petitioner, due to non-cooperation of the respondent authority. In consequence thereof the impugned order has been passed by directing forfeiture of the earnest money deposit and in addition to that debarment for a period of three years.

In the original order, three penalties have been imposed, i.e.:

"1. To cancel the work awarded to M/s KEM & PCR Joint Venture Firm vide LOA No.G.M. IM-A) /Magadh/Coal Transp. 03 yrs/16-17/2007 Dated 18.01.2017 issued by the staff officer (Mining), Magadh Amrapali Area.

2. Forfeiture of the EMD deposited by M/s KEM & PCR Joint Venture Firm in respect of the above said work.

3. To debar M/s KEM & PCR Joint Venture Firm for a period of 03 (Three) years from participating in future Tenders of CCL in individual capacity or as Joint Venture. In addition, all such individuals/firms/Companies/Associates/JVs who are the "Persons" as defined in Section 40A(2)(b) of the Income Tax Act 1961 of the Debarred Party, where in the words "assesse" replaced with words "debarred Party" shall also remain de-barred for a period of "THREE" years".

Thereafter one corrigendum has come on 14.09.2017 whereby and whereunder the impugned decision taken on 13.09.2017 has been modified to debar M/s KEM & PCR Joint Venture Firm, M/s Khandelwal Earth Movers and M/s Punya Coal Roadlines for a period of three years from participating in future tenders of CCL in individual capacity or a joint venture.

3. Ground, inter alia, in assailing the aforesaid order has been taken by the petitioner, which is as follows:

(i) The Clause 6.1 of the GTC, however precedes a condition enabling the respondents in case of non-commence of the work to give 15 days' notice in writing to commence the work, failing which to forfeit the earnest money deposit and in addition to that the company will reserve the right to such defaulter contractors for a minimum period of one year.

The contention of the petitioner is that in Clause 6.1 of the GTC the minimum period of one years of debarment can be passed but here his debarment is for three years but what led the authority in debarring the petitioner for three years, has not been explained in the impugned order, and therefore, in absence of any reasoning for debarring the petitioner for a period of three years cannot be said to be proper.

(ii) The provision of Clause 6.1 of GTC will not be applicable in view of the fact that the petitioner in spite of necessary endeavors could not be able to commence the work, which is only due to non-cooperation on the part of the CCL

authority and if delay is not attributable to the petitioner he cannot be made to suffer.

4. The respondents have appeared and filed counter affidavit, inter alia, therein the ground has been taken that when a contract has been reached in between the parties, herein that the petitioner having specific terms in the contract to deal with such contractor who have failed in commencing the work and to face consequences, therefore, the petitioner since is coming in default by not commencing the work to be dealt with under the said provision as contained under Clause 6.1 of GTC has rightly been dealt with for the reason that the respondent authority time and again has requested to commence and conclude the work but the same has been discarded which resulted into heavy financial loss to the State exchequer.

The terms of contract once entered in between the parties by way of bilateral contract is binding upon the parties which is not to be interfered with by interpreting the terms of the clause by the High Court sitting under Article 226 of the Constitution of India.

The respondents have issued so many letters for conclusion of the work seeing the public interest at large but even then when the work has not been commenced the respondents having no option but to reserve the provision of Clause 6.1 of the GTC and if the said provision has been resorted to it cannot be said that any illegality has been committed.

Rebutting the argument advanced on behalf of the petitioner that under Clause 6.1 of the GTC the prescription of minimum period of debarment is there but exceeding the period of debarment after the period of more than one year the specific resort is to be assigned, it has been submitted that the reason has been assigned in the impugned order and when in spite of repeated direction issued by the Central Coalfield Ltd. to execute the work but having not done so, the debarment of three years have been inflicted which cannot be said to be disproportionate.

In response to the difficulty having been felt by the petitioner as the ground has been taken for non- commencing of the work by referring to Clause 22 of the e-Tender Notice, which stipulates that the bidder will have to visit and examine the site of work and its surroundings and obtain all information that may be necessary for preparing the bid and entering into the contract for execution of the work, therefore, when the petitioner has entered into an agreement it will be presumed that the agreement has been signed by visiting the site and as such the issue of facing difficulties by the local people cannot be said to be valid one.

5. Mr. Atanu Banerjee, learned counsel for the petitioner has relied upon an order passed by this Court in W.P.(C) No.7002 of 2017 along with other analogous cases, wherein according to him in the similar circumstances and on similar facts the order of debarment has been quashed and therefore, this writ petition is also deserved to be disposed of by taking into consideration the aforesaid order

passed in the aforesaid cases.

6. In response to the said, Mr. A.K. Das, learned counsel for the CCL has submitted that the order passed by a Co-ordinate Bench of this Court in W.P.(C) No.7002 of 2017 along with other analogous cases is not on the similar facts and circumstances as because in the said cases the performance guarantee was not deposited, the show cause notice has been issued but the same was not in terms of the Clause 6.1 of the GTC but the order of debarment has been passed for a period of three years but that is not the case herein and hence the said order is distinct on fact from the fact in this case.

7. After having heard learned counsel for the parties and on appreciation of the rival submissions this Court deem it fit and proper that before entering into the merit of the issues to deal with the order passed by the Co-ordinate Bench of this Court in W.P.(C) No.7002 of 2017 and analogous cases in order to reach to the conclusion, as to whether on facts the said order is applicable with the facts in the case in hand.

This Court, therefore, has called upon the record of W.P.(C) No.7002 of 2017 in order to scrutinize the pleadings supported by the relevant documents.

It is evident from the record of W.P.(C) No.7002 of 2017 wherein reference of show cause notice is dated 13.12.2016, contained thereof :

Ref. No.GM (M-A)/Amp/BPPL-UCC-VSSPL (JV)/2016/1746 Dated 13.12.2016

To

M/s BPPL-UCC-VSSPL (JV)

Indicon Viva, 3rd Floor, 53A,

Leela Roay Sarani,

Gariahat, Kolkata-700019 (WB)

Sub: Submission of BG

Ref:-NIT No.: -GNM (CMC)/Magadh-Amrapali/2016/05 dated 20.05.2016

Ref No.: -PO (A)/PD/Coal Trans./2016-17/979 dated 29.10.2016

Ref.No.GM(M-A)/Amp/BPPL-UCC-VSSPL(JV)/2016/1089 dated 24.11.2016

Ref.No.GM(M-A)/Amp/BPPL-UCC-VSSPL(JV)/2016/904 dated 06/12/2016

Dear Sir,

In reference to the above letters it is to inform you once again that the last and final date for submission of BG is 14/12/2016.

You are requested to submit BG/DD as Performance Security on and before 14/12/2016 else we will be compelled to forfeit EMD, cancel the contract and

debar you for a period of one year for participating in any tender process of CCL.

Yours faithfully

SO (Mining)

Magadh Amrapali Area

It is evident from the content of the show cause referred above that the show cause has been issued asking a show cause as to why he be not debarred for a period of one year for participating in any tender process of CCL.

The said show cause ultimately has culminated into final order which was passed on 14.03.2017 wherein the order of debarment for a period of three years has been passed.

The order of debarment for three years fell for consideration in those writ petitions and the Co-ordinate Bench while dealing with the issues and relying upon the judgment rendered by the Hon'ble Apex Court in the case of Gorkha Security Services vs. Government (NCT of Delhi) & Ors. reported in (2014) 9 SCC 105 and Kulja Industires Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors. reported in (2014) 14 SCC 731 has been pleased to come to the finding that the petitioners since have been debarred for a period of three years from participating in future tenders which vitiates in law having been passed without assigning any specific reason for taking such action against them.

Further consideration was made that one year has already elapsed since the date of issuance of the impugned letter, therefore, this Court has not considered fit to remand the matter before the concerned respondent to pass order afresh in this regard.

It is evident from the material on record in W.P.(C) No.7002 of 2017 that the show cause notice issued against the writ petitioner of the said case was not in pursuance to the provision of Clause 6.1 of the GTC since the said clause specifically stipulates that the debarment would be for minimum period of one year but the show cause therein was issued for without making reference of the word minimum but inflicted the punishment of three years, therefore, the Court has arrived at conclusion that when in the show cause there is no proposed debarment for a period of three years rather it is one year then what led the authority to pass order of debarment for three years that too without assigning any reason.

8. Herein, in the instant case show cause notice was issued on 08.04.2017 which is in pursuance to the Clause 6.1 of GTC which reads as under:

"If the Contractor, without reasonable cause or valid reason commits default in commencing the execution of work within the aforesaid date, the Company shall, without prejudice to any other right or remedy, be at liberty, by giving 15 days' notice in writing to the Contractor to commence the work failing which to forfeit

the Earnest Money deposited by him. Additionally the company will reserve the right to debar such defaulting contractors for a minimum period of one year."

The petitioner has responded to the same but the authority, having not satisfied, has passed an order on 13.09.2017 reflecting therein the reason that the work was awarded on 18.01.2017 but not commenced, in consequence thereof several letters have been issued to start the work but failed to start the work within the stipulated period as such finally, 15 days' notice was issued for starting of the work vide letter dated 08.04.2017 as per the Clause 6.1 of GTC but have failed to start the work and thereafter the consequence of not commencing the work has been discussed in the subsequent paragraph by making reference of the Clause 6.1 of the GTC and acting in pursuance to the same, Earnest Money Deposit has been forfeited and in addition to that debarment for a period of three years has been passed, however, subsequent to that corrigendum was issued on 14.09.2017 by modifying the decision taken on 13.09.2017.

As such, it is clear that the petitioner has entered into an agreement stipulated under general terms and conditions which contains Clause 6.1 and further once the petitioner has participated and entered into the terms of contract the same binds the parties, therefore, now it cannot be said by the petitioner that the condition stipulated under Clause 6.1 of the GTC is not applicable if the ingredients stipulated therein is attracted.

It is gathered from the pleading made by the parties that the LOA has been issued in favour of the petitioner with the condition that the work is to be commenced and completed within a period of three years but it has not been commenced even though the letter of assurance was issued on 18.01.2017 and thereafter several notices have been issued to the petitioner to commence the work altogether nine in numbers, as has been told by the learned counsel appearing for the respondents and ultimately invoking the condition of 6.1 of the General Terms and Conditions of the Contract (GTC) notice for commencing the work within 15 days' has been given.

The petitioner is furnishing his excuse as would be evident from pleading made in the writ petition that due to disturbances created by the local people the work could not have been completed but the said condition cannot be said to be a reasonable cause for non-commencing the work for relaxing the condition stipulated under Clause 6.1 of the GTC in view of terms as contained under Condition no.22.

It is evident from the terms and condition no.22 of e-Tender Notice which contains the condition about site visited, which reads:

"22. Site Visit: The Bidder, at the Bidder's own responsibility, cost and risk, is encouraged to visit and examine the Site of works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for execution of the works. The cost of visiting the Site shall be at the Bidder's own expense.

It shall be deemed that the tenderer has visited the site/area and got fully acquainted with the working conditions and other prevalent conditions and fluctuations thereto whether he actually visits the site/area or not and has taken all the factors into account while quoting his rates."

It is evident from the writ petition that the bidder's own responsibility, has encouraged to visit and examine the site of works and its surroundings and obtain all information that may be necessary for preparing the bid and entering into a contract for execution of the works. The cost of visiting the site shall be at the bidder's own expense. It shall be deemed that the tenderers has visited the site and it can be duly equated with the work condition and other prevalent condition and contractions thereof whether he actually visited the site/area or not and has taken all the factors into account while awarding his right.

As such once the bidder has entered into a contract and by accepting the letter of assurance he cannot turn around and say that the site is not proper for execution of the work otherwise if the plea of the petitioner would be accepted then it will be presumed to be relaxing the terms and conditions of the e-Tender as stipulated under Condition no.22 and if allowed to be done the same will be said to be over reaching the terms and conditions which is not permissible in view of the fact that if any condition stipulated, having its binding effect in the tender notice, the same is strictly to be adhered to, in this regard reference may made to the judgment of the Hon'ble Apex Court rendered in the case of Air India Ltd. v. Cochin International Airport Ltd. reported in (2000) 2 SCC 617, wherein, it has been laid down that the State can fix its own terms of invitation of tenders and that it is not incumbent to judicial scrutiny and the same is strictly to be adhered to.

In the case of Directorate of Education and Others v. Educomp DataMatics Ltd. and others reported in (2004) 4 SCC 19, it has been held therein that the courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. It was further held that while exercising the power of judicial review of the terms of the tender notice the court cannot order change in them.

In the case of Kanhaiya Lal Agrawal-Vs.-Union of India and Others reported in (2002) 6 SCC 315, it has been held therein at paragraph 6 by taking note of the judgment rendered by the Hon'ble Apex Court in the case of G.J. Fernandez-Vs.-State of Karnataka and Ors. reported in (1990) 2 SCC 488 that when an essential condition of tender is not complied with, it is open to the person inviting tender to reject the same. Whether a condition is essential or collateral could be ascertained by reference to the consequence of non-compliance thereto. If non-fulfillment of the requirement results in rejection of the tender, then it would be an essential part of the tender otherwise it is only a collateral term.

"6. It is settled law that when an essential condition of tender is not complied with, it is open to the person inviting tender to reject the same. Whether a

condition is essential or collateral could be ascertained by reference to the consequence of non-compliance thereto. If non-fulfilment of the requirement results in rejection of the tender, then it would be an essential part of the tender otherwise it is only a collateral term. This legal position has been well explained in G.J. Fernandez v. State of Karnataka."

In view of the aforesaid settled position of law, the condition stipulated under Condition No.22 of e-Tender binds the petitioner.

9. It needs to further refer herein that whether the condition stipulated under Condition no.22 can be said to be mandatory one, the answer of this Court will be that it will be mandatory due to the content of the said condition wherein it has been reflected:

" It shall be deemed that the tenderer has visited the site/area and got fully acquainted with the working conditions and other prevalent conditions and fluctuations thereto whether he actually visits the site/area or not or has taken all the factors into account while quoting his rates."

Hence, the said condition is mandatory one and the same cannot be given go by in the light of the aforesaid condition as stipulated in the e-Tender, the plea taken by the petitioner that the site was not workable cannot be said to be a valid reason for Non commencement of the work and therefore, the stand taken by the petitioner for not commencing the work is held to be contract to the condition of e-Tender as stipulated under Condition No.22 of e-Tender.

The respondent authorities have invoked Clause 6.1 to GTC by issuing notice of commencing the work within 15 days' and even then the work has not been commenced which shows the attitude of the petitioner since he has failed to act bona fidely even by not initiating the work hence acted contrary to the terms of contract, therefore, the respondents have forfeited the Earnest Money Deposit in terms of the condition stipulated under Clause 6.1 of the GTC.

Learned counsel for the petitioner has submitted that so far as the forfeiture of EMD the same is implied under Clause 6.1 of GTC but since there is stipulation in the Clause 6.1 that in addition to forfeiture of EMD the order of debarment for a minimum period of one year will be passed and therefore, when the debarment order is exceeding the minimum period of one year reason is to be assigned by the respondent authorities since there is no reason in the impugned order debarring for three years the order of debarment cannot be held to be sustainable in the light of law.

10. This Court has gathered from the material available on record that the reason of debarment as has been reflected by the respondents in non commencing of the work and when this Court has gone across the show cause and the impugned order, wherefrom it transpires that the specific reason has been assigned in show cause and the impugned decision assigning the reason of invoking the penal part as provided under Clause 6.1 of the GTC and the reason

is non commencing of work in spite of repeated requests and hence it cannot be said that the show cause or the impugned order is without any reason.

The question of quantum of period of debarment has also been advanced.

It is not in dispute that if any order of punishment which is affecting the right of the party must be in commensurate with the irregularity/offence committed and if it is found that the commission of irregularity or offence is not so grave warranting any severe penalty then the Court can come to the finding that the punishment is disproportionate to the gravity of offence committed.

The question of quantum of punishment needs to be assessed from the nature of work which is loading and transportation of ROM Coal from proposed coal stock of Sainik Patch of Magadh OCP to Dump Hopper CHP-CPP, Piparwar for a period of three years. The purpose of loading and transportation is for transporting the coal from the proposed coal stock and to dump it in another part so that it may be supplied to the other bidders who have been found to be successful in the bid either by way of linkage or by way of e-auction or open space sell.

Herein the letter of assurance has been issued on 18.01.2017 and therefore, the loading and transportation work was to be completed by 18.01.2020 but having not commencing the work within ten days of issuance of LOA which resulted into issuance of 15 days' notice on 08.04.2017 and even thereafter the work has not been commenced and ultimately the impugned decision was taken on 13.09.2017 and as such there is gross failure on the part of the petitioner-firm in not executing the work which is contrary to the terms and conditions of the contract which has caused financial loss to the respondents since the respondents have to come out with fresh e-Tender notice and in consequence of the same the other bidders have been allotted with the work and as such due to inaction by the petitioner by not performing in terms of conduct the same ultimately resulted into detriment to the public interest and therefore, if the debarment of three years has been imposed that cannot be said to be not commensurate or excessive.

The question of applicability of the order passed by this Court in W.P.(C) No.7002 of 2017 along with other cases, this Court is of the view that a judgment has got no universal application rather its applicability depends upon the facts and circumstances involved in each and every case in absence of any ratio decidendi and in the backdrop of this position of law the factual aspect as has been dealt with at the outset, wherefrom it is evident that in the said case the show cause notice was issued for debarring for a period of one year without making reference of the minimum period of one year as stipulated under Condition No.6.1 of GTC but the order of debarment was passed for a period of three years, therefore, this Court has come to the finding that the order of debarment should not be in conflict with the proposed period of debarment as has been reflected in the 15 days' notice issued in contemplation of the condition of 6.1 of GTC but here, in the instant case the show cause notice for initiation of work

within 15 days' stipulates reference of condition of 6.1 of GTC by making therein for debarring the petitioner for a period of minimum one year but the authority, on assessment of the gravity of the irregularity, flouting the terms and conditions of the contract, has debarred the petitioner firm for a period of three years and hence on fact of this case the order passed by this Court in W.P.(C) No.7002 of 2017 along with other analogous cases is not applicable.

Further, this Court in the aforesaid writ petitions, has to consider the ground that reason has not been assigned while debarring the petitioners of the said writ petitions for three years and further this Court after going across the impugned order dated 14.03.2017 subject matter of the said writ petition has found that the ground stipulated therein or the request pertaining to deposit of performance security deposit was to be deposited within 20 days of issuance of LOA but not deposited so the order has been passed that if the performance of security deposit would not be deposited there would be debarment for a minimum period of one year from participating in any tender process and with the stipulation that not even started the work but on making comparison with the reason assigned in the said order with the order passed which is subject matter of the instant case as has been gathered by this Court that herein the performance security deposit has been deposited but the work has not been started even in spite of nine requests made by the respondent authorities to the petitioner and thereafter ultimately resorting to the condition of Clause 6.1 of GTC of the order of debarment of three years has been passed, therefore, it cannot be said that the debarment of three years is not based upon a reason said to have not valid one rather according to the considered view of this Court that if a bidder has reached with an agreement with the respondent it is the duty to strictly adhere to the terms and conditions and if there is any failure the same will be treated to be serious lapse and therefore, when authority have resorted to the condition stipulated under Clause 6.1 of GTC it cannot be said that they have acted excess to their jurisdiction.

Further if any relaxation would be granted by this Court by interfering with the order which is contrary to the terms of contract in such circumstances it will lead to dictating the terms of contract by this Court sitting under Article 226 which ultimately will result in relaxing the terms and conditions of the e-Tender as contained under Condition No.22 thereof, which is not permissible as has been held by the Hon'ble Apex Court in the case of Union Territory of Pondicherry and Ors Vs. P.V. Suresh and Ors., reported in (1994) 2 SCC 70 wherein at paragraph 11 & 12 it has been held that the Court has no jurisdiction to alter the terms or re-write the contract between the parties.

In the case of Polymat India (P) Ltd. and Anr. Vs. National Insurance Co. Ltd. and Ors., reported in (2005) 9 SCC 174 wherein the Hon'ble Apex Court by taking aid of the judgment rendered in the case of United India Insurance Co. Ltd. Vs. M.K.J. Corp., reported in (1996) 6 SCC 428 has been pleased to observe that "after the completion of the contract, no material alteration can be made in its

terms except by mutual consent".

It is further settled that if the contract between the parties is in the realm of the private law, not being a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter of agitation by a Civil Court or in arbitration if provided for in the contract. Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Kerala State Electricity Board and Anr. Vrs. Kurien E. Kalathil and Ors., reported in (2000) 6 SCC 293.

It further needs to refer herein that if any premium would be given to the petitioner firm in absence of any valid reason the same will encourage such activities in future which will lead to frustrating the very object of issuance of tender notice with specific time for its completion.

11. In the entirety of the facts and circumstances, in the considered view of this Court it is not such a nature of case warranting interference by this Court sitting under Article 226 of the Constitution of India.

Accordingly, writ petition fails and it is dismissed.