

(2025) 12 GAU CK 0018

Gauhati HC

Case No: WPC Of 1017 Of 2022

Ashok Choudhury

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision: Dec. 10, 2025

Acts Referred:

- Constitution of India, 1950- Article 226

Hon'ble Judges: Rajesh Mazumdar, J

Bench: Single Bench

Advocate: D.P. Borah, B. Sharma

Final Decision: Allowed

Judgement

Rajesh Mazumdar, J

1. Mr. D. P. Borah, learned counsel for the petitioner and Mr. B. Sharma, learned Standing counsel, Railways appearing for the respondent No. 1, 2 & 3 were heard on 05.12.2025 and the judgment was reserved. The matter was listed under the column of to be spoken to on 9th of December 2025, and certain clarifications were sought and the matter was fixed for delivery of judgment.

2. The petitioner has preferred this writ petition under Article 226 of the Constitution of India, being aggrieved by the termination notice dated 20.01.2022 issued by the Divisional Engineer/I, N.F Railway, Tinsukia, thereby rescinding the work of Re-spacing of SC sleeper at Br. No.-561 between BOJ-TSK and Br No. 24 & 30 between SLGR-MRHT Br. No.-14, 24 & 29 between MRHT-DMGN section and for direction to the respondent authorities not to forfeit the security deposit and not to encash the performance guarantee submitted by the petitioner.

3. It is relevant to note here that the learned counsel appearing for the contesting parties had submitted in consonance that the performance guarantee submitted by the petitioner had been invoked during the pendency of this writ petition and that

the work had been completed by other agencies.

4. The facts leading to the institution of this writ petition are that the petitioner had been awarded the work of Re-spacing of SC sleeper at Br. No.-561 between BOJ-TSK and Br. No.- 24 & 30 between SLGR-MRHT Br. No.-14 & 24 & 29 between MRHT-DMGN section after they had successfully participated in a tender process. In this regard, the Letter of Acceptance dated 18.02.2020 was issued vide No. Tinsukia Division Engineering/ 03-TSK -ENGG-48-2019/00922310015863. The petitioner had deposited the requisite earnest money and performance guarantee. The security money and the performance guarantee deposited by the petitioner totalled at Rs. 10,76,690/- (Rupees ten lakh seventy six thousand six hundred ninety only). The contract agreement was signed between the petitioner and the Divisional Engineer-I N.F Railway, Tinsukia on 10.07.2020.

While the petitioner was carrying out the execution of the work, some technical difficulties arose for which the petitioner approached the respondent authorities for approval of variation in the contractual work. By a letter dated 05.03.2021, the petitioner was informed by the Divisional Engineer concerned that he had failed to start the work/show adequate progress and the petitioner was requested to submit a detailed programme for completing the work. Further, the notice required the petitioner to explain as to (i) why sleeper was carried without approved variation and (ii) why new sleeper was not supplied as per the contract agreement provisions. The petitioner replied through his communication dated 08.03.2021, whereby it was explained that the work was stopped because the cost involved in the re-spacing sleeper included re-fixing of 12 nut & bolts for proper specification and this item was excluded in the contract items. It was explained that although approximately 170 sleepers had been re-spaced, the approval for variation was required to continue the work.

5. Subsequently, the required variations were allowed and the petitioner started the work and the bills in this regard were also paid. The petitioner was served a letter dated 16.11.2021 whereby it was alleged that he had failed to show adequate progress and/or to submit a detailed programme for completing the work. The notice dated 16.11.2021 informed the petitioner that he was being given 7 days notice in accordance with Clause-62 of Standard General Conditions of Contract to commence the work to make good the progress, failing which further action to terminate the contract and complete the balance work without his participation would be taken. The petitioner has claimed in the writ petition that he had replied to the aforesaid letter by the communication dated 22.11.2021, whereby the petitioner had explained the reason for the delay in progress and he had also prayed for approval of variation proposed in the letter dated 22.11.2021 itself. The petitioner was thereafter served with another notice dated 25.11.2021 which purported to give him 48 hours notice in terms of the Clause-62 of the Standard General Conditions of Contract to commence works/to make good the progress of works, failing which

and on expiry of the period the contract would stand rescinded and that the work would be carried out independently without his participation. It was also informed that the security deposit would be forfeited and performance guarantee would be encashed.

6. It is contended in the writ petition that the petitioner had sent a communication dated 29.11.2021 to the Divisional Railway Manager, N.F Railway Tinsukia Division, Assam wherein they had explained that the re-spacing works in Bridge No. 561 and Bridge No. 14 up to 160 sleepers had already been completed. It was further stated in the communication that most of the works had been done with an expectation of variation of item No. 5 to the extent of including loosening and re-fixing of steel channel sleeper fittings. It was further submitted that to complete re-spacing of work Bridge No. 24, 30, 14, 24 & 29 additional items would be required and it was also stated that the petitioner had already purchased materials required for item No. 2. A request was made that the necessary variation be approved and the validity of the offer upto 21.02.2022 be extended to enable the petitioner to complete the work. It is also stated in the writ petition that another representation dated 19.01.2022 was made to the SSE/PWAY/SIMULUGURI (WEST), N. F Railway whereby the petitioner had submitted that the work had been discontinued till then since the third wave of covid pandemic had hampered the work and since the approval for variation had not been granted by the respondents.

7. By the letter No. W/411/Br. No. 561, 24, 30/W-1, dated 20.01.2022, the Divisional Engineer/I N.F Railway, Tinsukia informed the petitioner that the contract in issue stood rescinded and that the balance work would be carried out independently without his participation. He was also informed that the security deposit would be forfeited and the performance guarantee would also be encashed.

8. This writ petition came to be filed on 14.02.2022. Mr. D.P Borah, learned counsel appearing for the petitioner has submitted that the respondents had initially approved some of the variations proposed by the petitioner and when the request made later for approval of variation etc. were neither considered by the respondents nor replied, the petitioner had suffered inconvenience in having the work executed as per schedule. The learned counsel for the petitioner has submitted that the notice dated 16.11.2021 referred to an Office letter No. W/411/Br. No. 561, 24, 30/W-1, dated 04.10.2021 and it would be apparent from the undisputed letter dated 22.11.2021 that it was in reference to the Office letter dated 04.10.2021 and was in reply to the 7 days notices served upon the petitioner. The learned counsel for the petitioner has submitted that the respondents did not take the pain to consider the grievances raised by the petitioner in his letter dated 22.11.2021 and straightaway issued notice dated 25.11.2021 giving a notice of 48 hours in terms of the Standard General Conditions of Contract, in continuation of the notice dated 16.11.2021. The learned counsel for the petitioner further submitted that the letter dated 29.11.2021 and 19.01.2022 would amply

demonstrate that the petitioner had submitted the reply to the notice issued by the respondent authorities, explaining the reason for the delay in execution of the work. The aforesaid letter had also expressed the anxious intention of the petitioner to complete the work under the contract and had also demonstrated that the petitioner had already purchased the requisite items required for execution of the work in anticipation of the approval for variation of the items requested by the petitioner. In fact, by the communication dated 19.01.2022, the petitioner had expressed that the third wave of covid pandemic had hampered the work and that he had purchased all materials required even without approval of the variation. Therefore, he had requested that he may be allowed to continue the work. The learned counsel for the petitioner has submitted that all of a sudden on 20.01.2022 i.e. one day after the letter dated 19.01.2022, the respondent authorities informed the petitioner that the contract stood rescinded. The learned counsel for the petitioner has submitted that while exercising the power to rescind the contract to the disadvantage of a contractor, the respondent authorities are liable and were saddled with the responsibility of taking into account all relevant facts and circumstances including those which were projected by the petitioner in his representations. The learned counsel has also submitted that none of the orders passed by the respondent authorities reflect that the facts and circumstances projected by the petitioner and his eagerness to complete the contract had been considered by the respondent authorities before deciding to rescind the contract and further in imposing penalties on the petitioner to the extent of forfeiture of the security deposit and the performance guarantee which stood at Rs. 10 lakhs. The learned counsel for the petitioner has submitted that during the pendency of the writ petition, the respondents have got the work completed through some other agencies and therefore, in case this writ petition is allowed, the petitioner would be entitled to be refunded the security deposit and the performance guarantee recovered by the respondent authorities. The learned counsel for the petitioner has submitted that the only question which requires attention of this Court in the writ petition is as to whether the respondents had proceeded to rescind the contract in an arbitrary manner, without affording a reasonable opportunity of hearing to the petitioner. The learned counsel for the petitioner has submitted that when the representations filed subsequent to the notices had sought to explain the circumstances which merited the re-consideration of the decision of the respondents to rescind the contract and when the order passed by the respondents do not reflect any consideration of the explanation, it would be apparent that the respondents had acted with prejudiced intention to act to the detriment of the petitioner.

9. Contradicting the submission made by the learned counsel for the petitioner, Mr. B. Sharma, learned counsel appearing for the respondents/Railway has submitted at the outset that the present writ petition does not deserve to be entertained in view of the presence of arbitration clause in the contract agreement

executed between the petitioner and the respondents. He has submitted that the remedy for redressal raised by the petitioner would lie before an arbitrator to be appointed in terms of the aforesaid contract.

10. Mr. B. Sharma, learned counsel for the respondents has submitted that notwithstanding the aforesaid objection to the maintainability of the present writ petition, the petitioner has not been able to demonstrate that any terms of the contract has been violated by the respondent authorities and even in that view, this writ petition deserves to be rejected. Mr. B. Sharma, learned counsel for the respondents has submitted that, as was required in the prevalent circumstances, the petitioner had been initially afforded 7 days notice period and thereafter, he was afforded another 48 hours notice period. Only when the petitioner failed to commence the work/show progress in the work, the respondents authorities were constrained to rescind the contract. The learned counsel for the respondents has submitted that no change in the schedule rate was permissible for completing the contract agreement as such provisions did not exist, and provisions for affording variation with regard to the quantity were available in the General condition of contract. The learned counsel has submitted that after execution of the contract agreement, the rate, as requested by the petitioner, cannot be varied. Referring to the representation/communication dated 22.11.2021, 29.11.2021 & 19.01.2022, which were relied upon by the petitioner, Mr. B. Sharma, learned counsel for the respondents has submitted that a bare perusal of the said communication would reveal that they were not with regard to the notice dated 16.11.2021 and notice dated 25.11.2021 and therefore, the same did not require any consideration at the hands of the respondents. He submitted that admittedly, the petitioner had offered to continue with the work only as late as on 19.01.2022 and therefore, the action of the respondents in rescinding the contract was a reasonable and conscious decision. He has further submitted that as a natural corollary to the rescinding of the contract, it follows that the security money had to be forfeited and the performance guarantee had to be encashed. In view of the above, the learned counsel for the respondents submitted that the writ petition does not require interference and deserved to be dismissed.

11. In reply, Mr. D.P Borah, learned counsel for the petitioner has submitted that though it is a settled position that this Court, in exercise of power under Article 226 of the Constitution of India, would loathe from interfering in matters where an equally efficacious alternative remedy is available, it is also a settled position in law that the restraint is self imposed and does not have uniform universal application. He has submitted that when a writ petition seeks relief on the allegation of failure of principles of natural justice or where the enforcement of the fundamental rights is sought for, availability of alternative and efficacious remedy would be of no consequence. The learned counsel has referred to the decision of this Court delivered on 12.06.2024 in W.P(C) No. 2958/2016 to emphasize that in similar circumstances involving contracts with the railway, this Court had considered the

petition on merits, holding that in cases where a failure of adherence to the principles of natural justice are demonstrated, the availability of alternative remedy would be of no consequence.

12. Responding to the above, Mr. B. Sharma, learned counsel appearing for the railway, has submitted that the decision referred to by the learned counsel for the petitioner was in separate circumstances and would not apply to the facts and circumstances of the case.

13. The submissions made by the learned counsels appearing for the contesting parties have received the attention of this court and the documents made available in the records of the petition have been perused.

14. The first issue that requires to be addressed is whether this court would restrain itself from adjudicating on the issues raised by the petitioner due to the presence of the arbitration clause referred to by the respondents. This Court has perused the contents of the Standard General Conditions of Contract referred to by the Learned Counsel for the respondent Railways. He has referred to clause 64 of the said conditions of contract. This Court notices that the contract was rescinded by referring to the authority invested in the Railways through Clause 62 of the conditions of contract. A reference to Clause 63 of the said conditions reads as under :

63.1 Matters Finally Determined by the Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractors representation, make and notify decisions on all matters referred to by the Contractor in writing. Provided that matters for which provision has been made in Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) of Standard General Conditions of Contract or in any Clause (stated as excepted matter) of the Special Conditions of the Contract, shall be deemed as excepted matters (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that excepted matters shall stand specifically excluded from the purview of the Arbitration Clause.

15. Thus it appears to this Court that when the Railways take action under the provisions of Clause 62(1) of the Conditions of contract, such actions stand specifically excluded from the arbitration clause. The matter was thus directed to be relisted under the column to be spoken to on 9.12.2025 and upon query by the Court, the learned counsel for the respondents had submitted that action taken under the provisions of Clause 62(1) were not arbitrable, but the order of termination, though passed under the provisions of Clause 62(1) of the Contract,

had attained finality when the work was got executed through some other agency. He submitted that the issue of whether the petitioner was entitled to be refunded the security deposit and the performance guarantee were issues which could be referred to arbitration.

16. This Court, therefore, finds that the decision of the respondents which was admittedly taken under the provisions of Clause 62 of the Conditions of Contract are excluded from the purview of the Arbitration Clause. The issue, as to whether the petitioner would be entitled to recover his security deposit and the performance guarantee would depend upon an adjudication regarding the legality of the order of termination/rescinding the contract. This Court is also conscious of the fact that the petitioner has alleged violation of the principles of natural justice and has raised allegations of arbitrariness on the part of the respondents. Following the pronouncement of this Court in WP(C) 2958/2016, this Court would not like to restrain itself from determining as to whether the action of the respondents suffered from the vice of non-adherence to the principles of natural justice, more so in view of the fact that the litigation is of the year 2022. Determined thus, this Court does not find any impediment to adjudicate upon the grievances of the petitioner and the response of the respondents on the basis of materials available on record.

17. The respondents had served the first notice dated 16.11.2021 on the petitioner by referring the same to be a notice under the provisions of Clause 62 of the Standard General Conditions of Contract, giving him 7 days notice to commence work/to make good the progress. Clause 62 of the conditions contains as many as (xvii) reasons for which the notice can be issued. The notice dated 16.11.2021 does not indicate which of the reasons had been resorted to by the respondents. It is not in dispute that the petitioner had completed part of the work and was also paid bills in the first installment. Therefore, the notice must necessarily be presumed to be in reference to a part of the work. The notice does not reflect as to which part of the work the respondents were referring to. In other words, the notice was devoid of material particulars. Be that as it may, it is not disputed by the respondents that the petitioner had made a representation on 22.11.2021 and referred to the same letter dated 04.10.2021, which was referred to by the respondents also in their notice dated 16.11.2021. The second notice dated 25.11.2021 was also sought to be replied to by the petitioner through his reply dated 29.11.2022. No orders rescinding the contract came immediately after 48 hrs from service of notice on the petitioner. The contract was rescinded immediately after the petitioner had served a letter dated 19.01.2022, expressing his intention to continue work as he had already purchased all materials as required. The respondents have not given any reasons for not considering the representations of the petitioner. The only reliance placed by the respondents is on their authority to rescind from the contract and the consequential fall out of forfeiture of the security deposit and the invocation of the performance guarantee. The forfeiture of security deposit and encashment of performance guarantee were subject to outcome of the present lis.

18. In view of the shortcomings noticed in the notices dated 16.11.2021 and 25.11.2021, the fact that the representations filed by the petitioner did not receive any response from the respondents and the act that the respondents rescinded the contract immediately after being informed that the petitioner had purchased all required materials, this Court is of the opinion that the rescinding of the contract was the outcome of a process where the petitioner went completely unheard, with no decision having been taken on his representations. Accordingly, the notices dated 16.11.2021, 25.11.2021 and the termination notice dated 20.01.2022 are set aside and quashed. Since it has been stated that the work has already been completed, the respondents are now required to refund the security money and the performance guarantee to the petitioner expeditiously within a time frame, which this Court sets at 2(two) months from the date of this order.

19. Writ petition is allowed to the extent indicated above.