



{1}

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 606 OF 2026

M/s. MVV Satyanarayan
A registered Partnership Firm,
Through its Authorized Signatory,
Mr. Niel S/o. Kakasaheb Patil,
Age: 42 years, Occu.: Project Manager,
R/o.C/o.6-1-136/3M, Flat No.101
Meher Ratna Complex, Balram Colony,
Padmarraonagar, Secunderabad-500025 ... Petitioner

VERSYUS

1. The General Manager,
Central Railway, D.N. Road,
Mumbai CSMT - 400001
2. The Chief Administrative Officer (Const.),
Central Railway, New Administrative Building
6th Floor, D.N. Road,
Mumbai, CSMT – 400001.
3. The Chief Engineer/C/Central CSMT
Chief Administrative Officer (c)'s Office
Central Railway, New Administrative Building
6th Floor, D.N. Road,
Mumbai, CSMT -400001 ... Respondents

.....

Mr. Prasadrao Vemulapalli, Advocate h/f Mr. A.A. Fulfagar, Advocate for
Petitioner

Mr. N.S. Salunke, Advocate for Respondents No.1 to 3

.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

RESERVED ON : 13 MARCH, 2026

PRONOUNCED ON : 27 MARCH, 2026

{2}

JUDGMENT/ORDER [Per Hiten S. Venegavkar, J.] :-

1. Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal.
2. The present Writ Petition is filed under Article 226 of the Constitution of India by a partnership firm, M/s. MVV Satyanarayan, registered at Hyderabad, acting through its authorized signatory (hereinafter referred to as 'the petitioner'), against Respondent No.1 – the General Manager, Central Railway; Respondent No.2 – the Chief Administrative Officer (Construction), Central Railway; and Respondent No.3 – the Chief Engineer (Construction)/Central, Chhatrapati Shivaji Maharaj Terminus, Mumbai (hereinafter collectively referred to as 'the respondent railway authorities').
3. By way of the present petition, the petitioner challenges the communication dated 13.11.2025 issued by Respondent No.3, whereby a decision was taken to part terminate the contract/agreement dated 17.08.2024, and further challenges the termination notice dated 02.12.2025, on the grounds that the said actions are arbitrary, illegal, and contrary to the principles of natural justice. The petitioner has also prayed for a direction permitting it to complete the balance work as per the petitioner's letter dated 6th December 2025 and for a further direction to the respondents to release the payments for the work executed by the petitioner till date.

{3}

4. The factual matrix as pleaded by the petitioner in its memo of petition is as follows. The petitioner is a duly registered partnership firm based at Hyderabad and has been carrying on business since 03.09.1984. The petitioner claims to have been engaged in the field of civil contract works for Indian Railways, both Central and various State Governments and their instrumentalities, for over four and a half decades, with what it describes as an immaculate track record in meeting exact specifications and completing work within targeted timelines. In the process, it is stated that the petitioner has acquired specialized skills in the construction of bridges and other works for Indian Railways.

5. It is the case of the petitioner that Respondent No.2 had invited tenders for the construction of balance minor and major bridges at various places, construction of Road Under Bridges (RUBs) and drain works in connection with the Ahmednagar–Beed–Parli Vaidyanath New Broad Gauge Line Project, by issuing a Tender Notice dated 19.01.2024. The petitioner's tender was accepted by Respondent No.3, who issued a Letter of Acceptance dated 30.04.2024. Thereafter, an agreement came to be executed between Respondent No.2 and the petitioner on 17.08.2024. As per the terms of the Letter of Acceptance, the initial value of the work was Rs.3,74,65,7193/- (Rupees Thirty Seven Crores

{4}

Forty Six Lakhs Fifty Seven Thousand One Hundred and Ninety Three only). The work was to be completed within twelve calendar months from the date of the Letter of Acceptance, making the completion date on or before 29.04.2025. Upon completion of the work, the petitioner was also obligated to provide a maintenance period of twelve calendar months, including through the monsoon season, under the defect liability clause.

6. The petitioner further states that in terms of the Letter of Acceptance, the Earnest Money Deposit (EMD) of Rs.20,66,500/- submitted by the petitioner along with the tender document was to be retained by the respondents as part payment of security deposit until the liability period was over. In addition, the respondents were entitled to deduct and recover an amount equivalent to 6% of each running bill until the amount so deducted and recovered reached 5% of the contract value towards the balance security deposit. The petitioner contends that, as a consequence of these deductions, the respondents hold a sum of approximately Rs.2.66 crores belonging to the petitioner. The petitioner has also furnished a Bank Guarantee towards a Performance Guarantee for an amount of Rs.1,87,32,859.67 issued by the Bank of Maharashtra, the validity of which, according to the respondents, has been extended up to 25.06.2026.

{5}

7. The petitioner submits that upon receipt of the Letter of Acceptance, it mobilized and deployed the necessary men, machinery, and material to the site and commenced work with due earnestness so as to complete it within the agreement period. It is further submitted that during the execution of the work, due to prevailing site conditions, certain additional quantities and extra items became necessary, on account of which two supplemental agreements were entered into between the parties, whereby the value of the work was increased to Rs.54,85,03,233.53/- (Rupees Fifty Four Crores Eighty Five Lakhs Three Thousand Two Hundred and Thirty Three and paise Fifty Three), representing an increase of approximately 46 to 50% over the original contract value. Consequent upon the increase in quantities and the change in the scope of work, coupled with prevailing site conditions, the completion period was also extended from time to time without the imposition of any penalty, and the agreement was stated to be valid through 31.03.2026. The petitioner contends that the extension of time without any penalty is itself indicative of the fact that the delay in completion of work was not attributable to the petitioner but was on account of factors beyond its control.

8. As per the case of the petitioner, work to the tune of approximately Rs.46 crores has been executed, out of which the

{6}

petitioner has been paid an amount of Rs.38,95,69,185/- and that work valued at approximately Rs.7.5 crores is yet to be measured, recorded and paid for. The petitioner further contends that during the execution of work, without the consent of the petitioner and without any formal amendment to the agreement, certain works forming part of the scope of work under the agreement dated 17.08.2024 were awarded by the respondents to other agencies. Some of these offloaded works, according to the petitioner, were crucial for the completion of the petitioner's own scope, including the laying of the deck slab on the major bridge. While the work was in progress, the petitioner alleges that for extraneous reasons, Respondent No.3 issued a series of show-cause and adverse notices in order to arm-twist and compel the petitioner not to raise complaints about the unauthorized offloading of works to what the petitioner describes as 'blue-eyed boys', without entering into formal agreements with those agencies.

9. It is the case of the petitioner that without regard to the prevailing site conditions and the progress of work, a communication dated 13.11.2025 was issued by Respondent No.3 through which the administration took a decision to 'part terminate' the work awarded to the petitioner, which the petitioner describes as unheard of in the annals of contract management. A Seven Days' Notice was issued on

{7}

19.11.2025, followed by a 48-Hours' notice on 27.11.2025, and finally the agreement was terminated by way of a Termination Notice dated 02.12.2025. The petitioner submits that the managing partner was out of the country at the relevant time and returned only on 29.11.2025, which is stated to be one of the reasons for not replying to the show-cause notices. Feeling aggrieved by what it terms an illegal termination, the petitioner has approached this Court invoking its jurisdiction under Article 226 of the Constitution of India.

10. The learned Advocate appearing on behalf of the petitioner has advanced the following arguments in support of the petition. It is firstly argued that the reasons assigned in the communications dated 13.11.2025 and 02.12.2025 are absolutely contrary to the actual site conditions and hence cannot be sustained. It is further argued that as on 13.11.2025, the petitioner still had more than 140 days remaining to complete the balance work, and even as on the date of issuance of the final termination notice on 02.12.2025, there were more than 100 days remaining, which made the action of part termination and eventual termination completely unwarranted and deserving of interference by this Court. It is also submitted that since certain works were offloaded by the respondents to other agencies without the consent of the petitioner, the failure of those other agencies to complete the offloaded work cannot be fastened as a liability upon the petitioner.

{8}

11. The learned Advocate for the petitioner further argues that the allegations made in the letters dated 13.11.2025 and 02.12.2025 are trivial in nature and that most of the works were actually in progress at the relevant point of time, and hence did not warrant either part termination or full termination. He argues with vehemence that both the communications dated 13.11.2025 and 02.12.2025 were issued in gross violation of the principles of natural justice as the petitioner was never afforded an adequate opportunity of being heard before the impugned decisions were taken. He contends that the petitioner had sufficient time remaining to complete the contracted work within the extended period of validity of the agreement, namely, 31.03.2026, and therefore the impugned communications are bad in law. He further argues that some of the works offloaded to third agencies were a precondition for the petitioner to take up and complete its allotted work, and therefore, the non-completion of the offloaded work by those third agencies cannot be attributed to the petitioner, nor can the petitioner be held liable for any resultant delay. He submits that even at the time of filing of the present petition, sufficient time remained for the balance contract work to be completed, and if permitted by this Court, the petitioner is ready and willing to complete the work within the balance days. In support of this submission, he draws the attention of this Court to the letter dated 06.12.2025 addressed by the petitioner to the

respondent authorities expressing its desire to complete the work within the balance period.

12. On the question of maintainability of the writ petition, the learned Advocate for the petitioner acknowledges that the contract agreement contains an arbitration clause but argues that the reliefs sought in the present petition are declaratory and consequential in nature, and if relegated to arbitration, it would consume substantial time, during which the material already present at the site would get damaged and rendered unusable, thereby causing irreparable harm to the petitioner. He also argues that the primary challenge in the present petition is to the termination order on the grounds of violation of the principles of natural justice, which is a public law remedy and is cognizable by this Court under Article 226 of the Constitution. In support of the maintainability of the writ petition, the learned Advocate places heavy reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Union of India & Ors. v. Tania Construction Pvt. Ltd.*, (2011) 5 SCC 697, which is also a railway contract case, wherein the Hon'ble Apex Court has held that an alternative remedy, including the existence of an arbitration clause in a contract, is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court, and that such a petition is maintainable.

{10}

13. The learned Advocate appearing for the respondent railway authorities has advanced arguments in support of the action taken and in support of the impugned orders. He submits that the termination order dated 02.12.2025 has been issued strictly in accordance with the terms and conditions of the contract agreement and after duly following the process of law as contemplated therein. He states that the respondents had invited tenders for the completion of the subject work and, after accepting the tender of the petitioner, issued a Letter of Acceptance as per standard procedure and thereafter executed the contract agreement in accordance with the General Conditions of Contract (GCC). The completion period, maintenance period, retention of EMD amount, deduction of security deposit, and the performance guarantee are all strictly in terms of the contract agreement and the Letter of Acceptance dated 30.04.2024. He further states that the validity of the performance guarantee in the form of a Bank Guarantee of the Bank of Maharashtra has been extended up to 25.06.2026.

14. The learned Advocate for the respondents further submits that it was the sole and primary responsibility of the petitioner to deploy the requisite manpower, machinery, and material at the site for commencement and continuous progress of the work. He contends that the respondents wrote to the petitioner on several occasions pointing

{11}

out the slow progress of work and the non-deployment of requisite manpower at the site. Regular meetings were held with the petitioner, and the minutes of meetings dated 06.01.2025 and 13.06.2025 record that target dates for completion of various works were provided to the petitioner, but the same were never adhered to or achieved. Owing to site conditions, additional quantities and additional items were incorporated into the existing scope of work in agreement with the petitioner, and variations were processed accordingly, for which the petitioner also submitted numbered claim certificates. The first extension of time was granted to the petitioner up to 30.09.2025, at the request of the petitioner vide its communication dated 28.04.2025. A second extension was thereafter granted up to 31.03.2026, again on the specific request of the petitioner. Thus, according to the respondents, the original timeline of twelve months has been extended by a further eleven months, representing an extension of approximately 91% of the original completion period, while the variation in the original contract amount is approximately 46%.

15. The learned Advocate for the respondents submits that even after the grant of extensions, the petitioner was unable to complete the work, and after reviewing the progress, it was found that there was no activity at the site for the casting of the deck slab. Accordingly, a Seven

{12}

Days' Notice was issued to the petitioner on 19.11.2025. Even after the said notice, the petitioner failed to mobilise the necessary resources. A 48-Hours' Notice was therefore issued on 27.11.2025, but there was still no improvement. The part termination notice dated 13th November 2025 was issued in accordance with Annexure XIII of the contract agreement, due to the urgency of completing the work before a scheduled inspection by the Commissioner of Railway Safety (CRS), and the poor performance and planning on the part of the petitioner had resulted in the delay of the CRS inspection by four months. The termination of the agreement on 02.12.2025 was accordingly a culmination of a long process during which the petitioner was given ample opportunity but repeatedly failed to comply.

16. With regard to the payments claimed by the petitioner, the learned Advocate for the respondents submits that the amounts claimed in the petition are incorrect, as the petitioner has not submitted the details of measurements along with the technical site registers duly signed by the railway officials in respect of the balance work. Measurements for the balance work have not been initiated by the petitioner till date, and therefore the payments in respect of such work remain outstanding solely on that account. He further submits that the action taken by the respondents is in strict accordance with the terms

and conditions of the contract, which expressly reserves the right of the railway to alter, omit, or get executed any part of the work through other agencies.

17. On the question of maintainability of the writ petition, the learned Advocate for the respondents strongly argues that, in view of Clauses 63 and 64 of the General Conditions of Contract, all disputes between the parties are required to be resolved by way of arbitration. He submits that once the parties have consciously adopted an arbitration mechanism for resolution of disputes arising out of the contract, there is no warrant for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. He further submits that the issues raised by the petitioner are essentially disputed questions of fact, requiring the recording of evidence and proof, which is a function that cannot be performed in a writ petition but can only be adjudicated before an arbitrator. In support of his contentions, he relies upon the judgment of the Hon'ble Supreme Court in (i) State of *U.P. & Ors. v. Bridge & Roof Co. (India) Ltd.*, (1996) 6 SCC 22, (ii) *Kerala State Electricity Board & Anr. v. Kurien E. Kalathil & Ors.*, (2000) 6 SCC 293 and (iii) *Joshi Technologies International Inc. v. Union of India & Ors.*, (2015) 7 SCC 728.

18. We have heard the learned Advocates for both the parties at length and have carefully perused the material on record, including the documents annexed to the petition and the reply filed by the respondents, and have given our earnest consideration to the citations relied upon by both sides. We are now called upon to adjudicate upon the maintainability of the present writ petition and the merits of the challenge mounted by the petitioner against the impugned orders.

19. Before we advert to the facts of the case, it would be apposite to set out the legal framework governing the invocation of writ jurisdiction by a High Court under Article 226 of the Constitution in matters arising out of contractual disputes between a contractor and a State or its instrumentality. The law on this aspect is well-settled through a catena of pronouncements of the Hon'ble Supreme Court of India, and the principles emerging therefrom may be briefly summarised. The power of this Court under Article 226 of the Constitution is undoubtedly plenary and wide. It is also well settled that the existence of an alternative remedy, including an arbitration clause in a contract, does not absolutely and invariably foreclose the exercise of writ jurisdiction by a High Court. At the same time, however, it is equally well settled that writ jurisdiction under Article 226 is discretionary in nature, and the exercise of such extraordinary jurisdiction has to be calibrated with

care and caution, having regard to the nature of the dispute, the availability of an efficacious alternative remedy, and the question of whether the dispute essentially involves contested questions of fact that cannot be adjudicated in writ proceedings.

20. The Hon'ble Supreme Court, in State of *U.P. & Ors. v. Bridge & Roof Co. (India) Ltd.* (supra), laid down the foundational principles governing this field in clear and emphatic terms. In that case, the Apex Court held that a contract between the parties is in the realm of private law and is governed by the provisions of the Contract Act. Any dispute relating to the interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition; that is a matter either for arbitration, as provided by the contract, or for the civil court, as the case may be. The Court further held that where the contract itself contains a clause providing for settlement of disputes by reference to arbitration, there is no reason why the parties should not follow and adopt that remedy, and that the existence of an effective alternative remedy, in such case provided in the contract itself, is a good ground for the Court to decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. The Hon'ble Apex Court pointedly observed that Article 226 of the Constitution of India was not meant to supplant the existing remedies

at law but only to supplement them in certain well-recognized situations.

21. The principle enunciated in *Bridge & Roof Co.* (supra) was affirmed and elaborated by the Hon'ble Supreme Court in ***Kerala State Electricity Board & Anr. v. Kurien E. Kalathil & Ors.*** (supra), wherein the Apex Court, speaking through a Bench of two learned Judges, reiterated with clarity that every act of a statutory body need not necessarily involve an exercise of statutory power, and that statutory bodies, like private parties, have the power to contract or deal with property, and such activities may not raise any issue of public law. The Court held that the contract between the parties therein was in the realm of private law and not a statutory contract, and that disputes relating to the interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution. It was further held that whether any amount is due to the contractor and, if so, how much, and whether the refusal of the authority to pay it is justified or not, are not matters which could have been agitated and decided in a writ petition. The Court emphasized that the proper forum for such adjudication is a civil court or, where the contract provides for it, arbitration.

22. The Hon'ble Supreme Court in *Joshi Technologies International Inc. v. Union of India & Ors.*, reported in (2015) 7 SCC 728, further clarified the position by holding that the law has developed through a catena of judgments, and from a reading of those judgments it emerges that in pure contractual matters, the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. The Court held that such a remedy is available only in a limited sphere, namely, when the non-Government contracting party is able to demonstrate that it is a public law remedy which it seeks to invoke, as contra-distinguished from the private law remedy simpliciter available under the contract. This principle constitutes a clear and authoritative statement of the law on the interface between writ jurisdiction and contractual disputes.

23. We have given careful consideration to the judgment of the Hon'ble Apex Court in *Union of India & Ors. v. Tantia Construction Pvt. Ltd.* (supra), upon which the learned Advocate for the petitioner has placed heavy reliance. The Hon'ble Apex Court, in that case, upheld the maintainability of the writ petition filed by a railway contractor challenging an order requiring it to execute enlarged and altered work at the same rates as originally tendered, and held that the existence of an arbitration clause in the agreement does not absolutely bar the

parties from invoking the writ jurisdiction of the High Court or the Supreme Court. The Court reiterated the rule that the exclusion of writ jurisdiction on account of an alternative remedy is a rule of discretion and not one of compulsion. We have no quarrel with the aforesaid legal proposition. However, the *Tantia Construction* judgment must be read in its correct context. In that case, the dispute was not merely a factual dispute regarding slow progress or breach of contractual obligations; rather, it involved a fundamental question of whether the Railway was entitled to require the contractor to execute a substantially and qualitatively altered scope of work, amounting in substance to a new project, at the rates originally tendered, which raised a significant public law issue pertaining to the exercise of contractual power arbitrarily and beyond the four corners of the agreement. The factual matrix of the present case is materially different, as we shall presently demonstrate.

24. Before examining whether the disputes in the present case are essentially factual in nature, we must address the principal ground urged by the petitioner, namely, the alleged violation of the principles of natural justice. The petitioner's learned Advocate has vehemently contended that the impugned communications dated 13.11.2025 and 02.12.2025 were issued without affording the petitioner any

{19}

opportunity of being heard. We find this submission to be factually unsustainable in the present case. From the record before us, it is evident that the respondent railway authorities had issued multiple show-cause notices and adverse progress reports to the petitioner over a prolonged period, spanning several months prior to the issuance of the part termination notice. The minutes of meetings held on 06.01.2025 and 13.06.2025, and the communications between the parties, establish beyond any doubt that the petitioner was made fully aware of the concerns of the respondents regarding the slow progress of the work and the non-deployment of adequate manpower and machinery at the site. The petitioner was not only present at those meetings but was also given specific target dates for completion of various items of work. Seven Days' Notices were issued to the petitioner on at least five separate occasions and 48-Hours' Notices were also issued repeatedly, all of which were received by the petitioner.

25. In this background, The work assigned to the petitioner was of national importance, and therefore completion of the said project within time was absolutely necessary for the public at large and also for the nation. The respondents, being public authorities involved in essential services like Railways, have a primary duty towards the citizens of this nation, and therefore the targeted completion of the

{20}

work was not only necessary but rather mandatory. The record shows that the respondent authorities have constantly raised their concern with the petitioner regarding the slow progress of the work and have, from time to time, issued instructions and directions to the petitioner to expedite the work and complete the same within the allotted time as well as the extended time. It will, therefore, be incorrect to characterize the impugned action as one taken behind the back of the petitioner without any opportunity of being heard. The communication dated 13.11.2025 and the subsequent termination notice dated 02.12.2025 were not the first communications from the respondents; they were the culmination of a long chain of notices, meetings, and communications, all of which afforded the petitioner more than adequate opportunity to explain its position, mobilize resources, and remedy the defaults complained of. The submission of the petitioner that its managing partner was abroad and therefore could not respond is, in our considered view, an afterthought that cannot be elevated to the level of a valid legal ground of natural justice violation. The petitioner is a partnership firm, capable in law of acting through its authorized representative or any other partner, and the absence of the managing partner from the country does not create a legal vacuum that would nullify the actions taken by the respondents after following the due contractual process. The principles of natural justice do not require the

{21}

respondents to wait indefinitely for a response or to maintain the status quo until such time as it suits a contracting party to engage with the notices issued to it.

26. Turning now to the crux of the matter, we are of the considered view that the disputes sought to be agitated in the present writ petition are essentially and overwhelmingly disputes involving contested questions of fact. The petitioner alleges, on one hand, that the works were in progress and that the extension of time without penalty is indicative of the absence of any default on its part. The respondents, on the other hand, have specifically averred that the progress of work was consistently unsatisfactory, that the petitioner repeatedly failed to adhere to contractual milestones, that no activity was observed at the site for the casting of the deck slab despite repeated notices, and that the Commissioner of Railway Safety's inspection was delayed by four months on account of the petitioner's poor performance and planning. The petitioner has alleged that certain works were offloaded to other agencies without its consent, which prevented it from completing its own work. The respondents have denied that such offloading was improper or beyond the scope of the contractual power reserved to the railway. The petitioner has claimed that a sum of approximately Rs.7.5 crores is yet to be paid for work already executed, while the

{22}

respondents have submitted that the measurements and technical documentation required to process payment for the balance work have not been submitted by the petitioner.

27. It is manifest that each and every one of these contentions raises a disputed question of fact that cannot be examined, evaluated, or adjudicated in a proceeding under Article 226 of the Constitution. A writ court does not record evidence, examine witnesses, or scrutinize technical specifications and site records. The determination of whether the work was progressing satisfactorily or not, whether the offloading of certain works was in accordance with or contrary to the terms of the contract, whether the petitioner is entitled to additional time for completion, whether any amount is due and payable to the petitioner, whether the default in completion is attributable to the petitioner or to other agencies appointed by the respondents, and whether the termination was for *bona fide* reasons related to public interest and the operational requirements of the railway — all of these are questions that can only be resolved through a detailed examination of evidence, including technical site records, minutes of meetings, correspondence between the parties, measurement books, and the opinions of experts, if any. The appropriate forum for such an exercise is the Arbitral Tribunal as specifically agreed upon by the parties under Clauses 63 and 64 of the General Conditions of Contract.

28. We are also of the view that the petitioner has failed to demonstrate the existence of any element of public law that would justify the exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution. The rights sought to be enforced by the petitioner are purely contractual rights arising from the agreement dated 17.08.2024. The petitioner's grievance, at its core, is that the respondent authorities terminated the contract before the expiry of the extended completion period, and that the reasons given for termination are factually incorrect or insufficient. This is a private law dispute arising in the realm of contract and is not a matter involving the violation of any fundamental right or any statutory right that requires the intervention of this Court under Article 226. As the Hon'ble Supreme Court observed in *Kerala State Electricity Board v. Kurien E. Kalathil* (supra), not every action of a statutory body or instrumentality of the State raises a public law issue, and where the dispute is purely in the domain of private law, the appropriate remedy is before a civil court or an arbitrator, as the case may be.

29. We have also considered the submission of the petitioner's learned Advocate that if the petitioner is relegated to arbitration, the material at the site would get damaged and become unusable, thus causing irreparable harm. While we are sensitive to this concern, we

{24}

find that this submission does not, by itself, create a ground for invoking the writ jurisdiction of this Court. The Arbitration and Conciliation Act, 1996 itself provides adequate mechanisms for obtaining interim relief, including under Section 9 of the Act, where a party may approach the competent court for interim measures of protection pending arbitration proceedings. The petitioner is at liberty to avail of those statutory remedies. The availability of interim relief through the arbitration framework further reinforces our conclusion that the present writ petition is not the appropriate vehicle for the adjudication of the petitioner's grievances.

30. Having regard to the foregoing analysis, we are of the considered view that the present writ petition is not maintainable for the following principal reasons. First, the disputes raised in the petition are essentially disputes involving contested questions of fact arising out of the execution of a works contract, which are incapable of adjudication in a writ proceeding and must be resolved through the mechanism of arbitration as contractually agreed upon between the parties. Second, the petitioner has failed to make out any case of violation of the principles of natural justice, inasmuch as the respondent railway authorities had issued multiple notices, held numerous meetings, and provided the petitioner with ample and repeated

opportunities over a prolonged period to respond, mobilize resources, and remedy the alleged defaults before issuing the impugned communications. Third, the petitioner has not demonstrated the infringement of any fundamental right or statutory right that would attract the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Fourth, both parties, having agreed to the mechanism of arbitration under Clauses 63 and 64 of the General Conditions of Contract for the resolution of all disputes arising out of the contract, it would be wholly inappropriate for this Court to permit a party to bypass the agreed dispute resolution mechanism and invoke the extraordinary jurisdiction of the writ court to adjudicate upon essentially contractual grievances. Fifth, the law laid down by the Hon'ble Supreme Court in *State of U.P. v. Bridge & Roof Co. (India) Ltd.* (supra), and *Kerala State Electricity Board v. Kurien E. Kalathil* (supra), read together with the principles enunciated in *Joshi Technologies International Inc. v. Union of India* (supra), fully supports the conclusion that this Court ought to exercise its discretion to decline to entertain the petition and to relegate the parties to the arbitral forum agreed upon by them.

31. The judgment in *Union of India v. Tantiya Construction Pvt. Ltd.* (supra) does not assist the petitioner in the facts of the present case. As we have already observed, the factual matrix of Tantiya Construction

{26}

involved a qualitatively different and more fundamental challenge, namely, the question of the railway's entitlement to alter the entire design of a project and compel the contractor to execute a substantially new and different project at the original tendered rates, which raised a pure public law issue of arbitrary exercise of statutory power. In the present case, in contrast, the petitioner's challenge is to the termination of a contract on the ground of slow progress and non-completion, which is a matter squarely within the domain of contract law and is subject to the arbitration clause agreed upon by the parties. The principle laid down in *Tantia Construction* (supra) that an alternative remedy is not an absolute bar to the exercise of writ jurisdiction is a rule of discretion, and in the exercise of that discretion, having regard to the nature of the dispute, the adequacy of the alternative remedy, and the essentially factual character of the controversy, we decline to entertain this petition.

32. Before parting with this order, we deem it appropriate to record that by dismissing the present writ petition, we have not adjudicated upon the merits of the dispute between the parties, and our observations on the facts contained in this judgment are solely for the purpose of determining the maintainability of the petition and shall not prejudice either party in any future proceedings. The petitioner shall be at liberty to raise all its claims and contentions, including the legality of

{27}

the termination, the question of payments due, the alleged offloading of works without consent, and any other grievance, before the Arbitral Tribunal constituted in accordance with the provisions of the General Conditions of Contract. It is further clarified that the security deposit, the EMD amount retained by the respondents, and the Bank Guarantee submitted by the petitioner shall continue to be maintained and shall not be forfeited, encashed, or acted upon by the respondents pending the initiation and conclusion of the arbitration proceedings, for a period of twelve weeks from today, to enable the petitioner to initiate arbitration proceedings.

33. In view of the above, the Writ Petition stands dismissed. Rule discharged. There shall be no order as to costs.

34. The observations made herein above shall not prejudice the rights of either party before the Arbitral Tribunal.

35. The protection granted by way of interim order, if any, subsisting as on date shall stand vacated subject to the aforesaid direction with respect to the security deposit, EMD, and Bank Guarantee.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE