



CIVIL

State or its instrumentality while acting in contractual field is under an obligation to act fairly and should not act arbitrarily or unreasonably

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The division bench president over by Hon'ble Chief Justice Alok Aradhe and Hon'ble Justice Arif S. Doctor, Hon'ble High Court, Bombay ("**BHC**"), in its recent Order and Judgment dated 25th February 2025, whilst quashing and setting aside the impugned notice vide which Mumbai Metropolitan Region Development Authority ("**MMRDA**") (a statutory body) informed the Systra MVA Consulting (India) Pvt. Ltd. ("**Systra**") of its decision to discontinue their services, without assigning any reasons for doing so; Laid down that the Court is not precluded from exercising the power of judicial review merely on the ground of availability of alternate remedy, in cases where the Court finds the action of termination of contract to be arbitrary and unreasonable.

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Brief Facts of the case:

MMRDA published a tender notice on 11th February 2020, inviting bids for appointment of General Consultant for the purposes of design, assistance in procurement, construction, management supervision for certain Mumbai Metro Lines. The consortium, viz. Systra – SMC IPL of which the Petitioner (Systra) is a part, submitted its bid on 16th June 2020.

The bid of the Systra was accepted by MMRDA and a Letter of Acceptance (LOA) dated 31st May 2021, was issued to the Systra by which the Systra was appointed as General Consultant for system works for part of certain Mumbai Metro Lines.

The parties, thereafter, on 28th December, 2021 entered into an agreement. The initial term of appointment of the Systra was for a period of 42 months from the date on which LOA was awarded to the Systra, i.e. 31st May, 2021 till 30th November 2024.

Systra, on 18th July, 2024, sought extension of term of contract which was granted on 4th October, 2024 by which the term of appointment of the Systra was extended upto 31st December 2026.

The MMRDA issued notice dated 3rd January 2025, by which the Systra was informed that it has decided to discontinue the Systra's service with effect from 46th day of issuance of the impugned notice. In the aforesaid factual background, the petition was filed.

Submissions of the Petitioner (Systra), in a nutshell, were:

Systra asserted that the presence of an arbitration clause does not preclude the Court from exercising its judicial review powers under Article 226 and the termination of the services of Systra is arbitrary and unreasonable and therefore the same can be interdicted by this Court. Arbitration is a private law remedy, whereas the current dispute involves public law principles. It is argued that even in contractual matters, the State is obligated to act fairly, reasonably, and in a non-arbitrary manner. Systra pleaded that MMRDA failed to assign reasons for the contract termination, violating contractual terms (particularly Clause 2.8.1) and fundamental principles of public law. Further, it urged the court to intervene, arguing that an alternative remedy like arbitration cannot adjudicate on the State's constitutional violations.

Submissions of the MMRDA, in a nutshell were:

The respondent, Mumbai Metropolitan Region Development Authority (MMRDA), argues that the writ petition is misconceived and based on an erroneous assumption that the termination notice was issued outside the contract's terms. MMRDA contended that the termination was carried out as per Clause 2.8.1(f) of the General Conditions of Contract, which allows MMRDA to terminate the agreement without providing reasons. The contract is determinable and cannot be specifically enforced. Systra agreed to the contract's terms and cannot now invoke public law principles of fairness and reasonableness to alter those terms. A clear distinction exists between administrative law and contractual law, and public law remedies cannot be applied merely because one party is a State entity. Since the agreement includes an arbitration clause, Systra should resolve disputes through arbitration, and not judicial review. The contract involves consultancy services, which require continuous performance and are not enforceable under the Specific Relief Act, 1963. Granting relief would impede an infrastructure project (Metro), which should not be delayed under the Act.

Analysis, Order and Judgement of BHC:

The Hon'ble BHC held that the action of the MMRDA in revoking the contract without assigning any reasons is arbitrary and unfair. Consequently, Hon'ble BHC hold that it is not necessary for the Court to examine the nature of contract and whether it is determinable in nature. Further, the Hon'ble BHC was not inclined to grant the relief of specific performance of agreement in this writ petition. However, the contention of MMRDA that it has acted in exercise of rights available to it under the contract and therefore the Systra should be relegated to the remedy of arbitration, was rejected, as the Hon'ble BHC found that the action of the MMRDA in discontinuing the consultancy services provided by Systra is arbitrary and unfair.

Conclusion:

The author believes that the Hon'ble BHC's Order and Judgment rightly held that the State cannot hide behind contractual covenants, particularly when the contract pertains to public welfare. If the wrongdoing of the State is permitted to go unchecked, it would discourage entities and individuals from entering into contracts with the State, thereby severely affecting the country's development.

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