2026:KER:30416

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 6TH DAY OF APRIL 2026 / 16TH CHAITHRA, 1948

WA NO. 834 OF 2026

AGAINST THE JUDGMENT DATED 11.03.2026 IN WP(C) NO.47578 OF 2025 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER

M/S. RCC-ACC (JV)
RCC ACC JV, C/O MORMUGAO PORT AUTHORITY, NEXT TO CUSTOM HOUSE, GOA REPRESENTED BY ITS AUTHORISED REPRESENTATIVE, MR. RAJEEV JAIN, AGED 53 YEARS, S/O. LATE SHRI HEMCHAND JAIN, PIN - 403803

BY ADVS. SMT. AMRITHA PANDE
SRI.RANJITH VARGHESE
SRI.RAHUL VARGHESE
SHRI.RALITZINE MENDEZ
SMT.AKHILA SUNIL NEDUNGADI

RESPONDENT

1 **BOARD OF MAJOR PORT AUTHORITY FOR PORT OF COCHIN WILLINGDON ISLAND, KOCHI, REPRESENTED BY THE CHIEF ENGINEER., PIN - 682009**

2. **MORMUGAO PORT AUTHORITY**
SAARSI, ADMINISTRATIVE OFFICE BUILDING, MORMUGAO HEADLAND SADA, GOA, PIN – 403804

2026:KER:30416

BY ADVS. SMT. POOJA MENON – R1
SRI. JOSEPH MARKOSE
SRI.ABRAHAM JOSEPH
SRI.ABRAHAM JOSEPH MARKOSE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.04.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2026:KER:30416

J U D G M E N T **C.R.**

Soumen Sen, C.J.

This writ appeal is filed at the instance of a contractor assigned with the work of construction of international and domestic cruise terminal and other allied facilities at Mormugao Port Authority through EPC contract, Tender No.T15-T-1946/2021-C.

2. The genesis of the dispute is the show cause notice dated 21.11.2025. In the show cause notice it was alleged by the Cochin Port Authority that the contract is liable to be terminated for wrongful delay or suspension of work or slow progress or inferior workmanship and in the event, no satisfactory reply is received within 10 days, the contract would stand terminated. The show cause notice was duly replied on 01.12.2025. One of the grounds was non availability of the valid CRZ approval and indemnity. The other contentions appears to be that arbitration proceedings are already underway concerning the major variations in scope and the consequential payments, which form the core of the contractual financial structure of the Cochin Port Authority as Employer and pending such arbitration

proceeding, any threatened action to terminate the contract would be unfair, thereby bypassing the adjudicatory process. The Cochin Authority however proceeded with the matter and terminated the contract on 10.12.2025. The grounds for termination are as follows.

- Non compliance of the Supplementary Agreement executed on 13.08.2025 in order to enable you cash flow by releasing an amount of Rs.6 crores on your request and non progress and non completion of the work as per the timelines indicated

- In spite of show cause notice dated 21.11.2025, you have stopped all works at site on 30-11-2005 an intimated wide your letter No.RCC-ACC/CPT/T15/T-1945/1004 dated 01-12-2025.

- The reasons for the delay in Implementation of the project submitted vide your letter No.ROC-ACC/CPT/T15/T-1945/1065 dated 01-12-2025 are not satisfactory.

- You have not submitted an action plan to complete the project within the stipulated time requested vide CoPA's letter No.Dy. CE-II/T-1946/Goa ICT/2022-C/2188(w) dated 21.11.2025.

- The JV partner M/s. Asian Construction Company has not executed any work at site even though as per the JV agreement executed between M/s.RCC Infraventures Ltd. and M/s. Asian Construction Company the parties shall execute works jointly in the ratio of 51% and 49% and this is clear breach of Contract Agreement executed in between CoPA and the Contractors M/s.RCC-ACC (JV).

- The rectification in painting of steel structures, fabrication & erection of steel structures, flooring works etc. intimated to the contractors vide CoPA's letter No.Dy. CE-II/T-1946/Goa ICT/2022-C/2008(w) dated 23.09.2025 has not been carried out to the satisfaction of CoPA till date.

- Your aforesaid actions amount to breach of contract as per the terms and conditions of contract.

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3. Instantly, during the pendency of the said proceeding, the petitioner/appellant invoked the Arbitration Clause before the Commercial Court, Ernakulam. But for reasons best known to the petitioner, the said proceeding was abruptly withdrawn. In the said proceeding initiated under Section 9 of the Arbitration and Conciliation Act, 1996 ('the Act' for short), one of the prayers was to maintain status quo as on the date of the said application. It has now been contended that the said application was ultimately withdrawn by reason of the fact that by the time the said matter came up for consideration before the Commercial Court, the order of termination had been issued. It has also now been argued that notwithstanding the existence of the Arbitration Clause, the public law remedy under Article 226 is not barred.

4. The learned counsel has further argued that when the show cause notice and the termination letter are read together, it can be clearly seen that the grounds of termination are based on certain facts which are not required to be replied by the petitioner in the show cause notice

because of its absence in the said show cause notice. Some of the grounds like non compliance of the supplementary agreement executed on 13.08.2025 or suspension of work on 30.11.2025 or rectification in painting of steel structures etc. mentioned in the letter of termination could not be found in the show cause notice and therefore, the order of termination is exfacie illegal as it was based on matters which were not even referred to in the show cause notice.

5. In this regard, the learned counsel has relied upon the following decisions in **Armour Security (India) Ltd. vs. Commissioner, CGST, Delhi, East Commissionerate and another**[1] , wherein the Hon'ble Supreme Court held as follows:

> 86. From the above exposition of law, we can safely conclude that a show cause notice delineates the scope of the proceedings in the expression of subject matter with which the authority would be dealing. It would be impermissible for an authority to invoke such rules, claims or grounds at a later stage which do not figure in the show cause notice. That is to say, any ground, reasoning or claim which does not figure out in the show cause notice cannot be permitted to adversely affect the noticee. Such recognition has even been made statutorily, as per sub-section (7) of Section 75 of the Act, which reads as thus:
>
> "75. General provisions relating to determination of tax.—
> (1) to (6).....
> (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be

1 2025 SCC OnLine SC 1700

> confirmed on the grounds other than the grounds specified in the notice."

6. In **Gorkha Security Services v. Government (NCT of Delhi) and others** [2], the Hon'ble Supreme Court held as follows:

> 21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
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> 22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

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2 (2014) 9 SCC 105

> i) The material/ grounds to be stated on which according to the Department necessitates an action;
>
> ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.
>
> We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

7. In **UMC Technologies Private Ltd. vs. Food Corporation of India and another**[3], the Hon'ble Supreme Court held as follows:

> "13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Assistant Custodian General, Evacuee Property, has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard."

8. The learned counsel has referred to various

3 (2021) 2 SCC 551

documents relied upon by the petitioner before the learned Single Judge to show that the said termination is illegal and the petitioner was compelled to carry out works not covered by the original contract. It is submitted that a Tribunal of three Judges have held that the scope of the work executed by the petitioner is of reconstruction and having regard to the permission granted by the Coastal Zone Management Authority on 11.12.2024, the work that the employer wanted the petitioner to execute would be in the nature of reconstruction and in the event, the petitioner is forced to execute the said work, it might attract penal consequences in terms of Clause 6 of the letter dated 11.12.2024. On the issue that even the disputed questions of fact can be decided in a writ petition, reliance has been placed on the decision in **A.P.Electrical Equipment Corporation v. Tahsildar and others**[4]**,** wherein it was held thus**:**

> 48.Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ

4 2025 SCC OnLine SC 447

court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

50. In the aforesaid context, we may look into the decision of this Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei AIR 1967 SC 1269. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:-

"Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court." (Emphasis supplied).

9. That the Arbitration Clause by itself would not be a factor to seek a public law remedy under Article 226 of the Constitution of India, reliance has been placed on the judgment of the Hon'ble Supreme Court in **Union of India and others v. Tantia Construction Private Limited**[5]**,** the relevant portion of which reads as follows:

33. Apart from the above, even on the question of

5 (2011) 5 SCC 697

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

10. The learned counsel for the respondents has supported the judgment and has submitted that the public law remedy may not lie in view of the Arbitration Clause in the agreement.

11. First, we address the issue of maintainability of the petition. We prefer to use the term “entertainability” rather than “maintainability,” as the scope of the Court’s power under Article 226 is not circumscribed by any statute. However, the fact remains that if the parties have agreed to a specific forum to which the dispute is required to be referred, this Court would be extremely reluctant to entertain a writ petition on the issue, in view of the existence of such an alternative remedy. It cannot be contended that the remedy which the petitioner has sought in this writ petition cannot be granted in a proceeding under Section 9 of the Act, which is a

Code in itself. It is noted that the remedy which has been claimed in this proceeding, can be conveniently granted by a court deciding an application under Section 9 of the Act or even by the Arbitrator in a proceeding under Section 17 of the Act. It is only in cases where there is an absence of an efficacious remedy available to the writ petitioner that, notwithstanding existence of such alternative remedy, the court may grant an interim relief.

12. In fact, as pointed out by the learned counsel appearing for the appellant, on an apparent reading of the show cause notice and the letter of termination, there may be some fresh materials not mentioned in the show cause notice. The same could have been a ground for the proceedings that had been initiated by the petitioner before the Commercial Court, and would have resulted in a finding favourable to the petitioner. Similarly, if the petitioner had proceeded to work without the required CRZ permission, then the petitioner may have exposed themselves to legal action and the same could have been a reasonable excuse for not commencing the work. In any event if the termination is wrongful, the Arbitrator can always grant damages. The petitioner apprehends that the

termination may detrimentally impact any future contract or the threatened blacklisting may prejudice them. However, the latter apprehension has been duly allayed by the learned Single Judge in directing the respondent authorities to follow the due procedure of law regarding blacklisting. It is needlesss to mention that insofar as the blacklisting is concerned, it has to follow the law laid down in the ***Erusian Equipment and Chemicals Ltd. vs. State of West Bengal***[6] following several other subsequent decisions including the decision in **UMC Technologies Pvt. Ltd** (supra). Although this relief could also have been sought by the petitioner in a proceeding under Section 9 of the Act, we grant such relief having regard to the fact that the learned Single Judge has also cautioned the authority to follow the rule of law before any final decision is taken.

13. The learned counsel has strenuously argued that even a disputed question of fact can be gone into and decided in a writ proceeding. In **A.P.Electrical Equipment Corporation** (supra), there was no existence of any Arbitration Clause, and there was nothing to show that the

6 (1975) 1 SCC 70

petitioner therein had initiated the proceeding by filing an application under Section 9 of the Act. It is trite law that mere existence of disputed questions of fact would not stand in the way of the writ court in deciding the matter, provided such disputed questions of fact can be tried and decided by the writ court. There is no bar *per se* even for the writ court to take evidence in this regard, but having regard to the fact that there are efficacious alternative remedies available where such issues can be more conveniently dealt with and decided, the writ court in appropriate situations decline to exercise this discretionary remedy.

14. The existence of the scope of work under the amended contract as urged by the appellant in this proceeding are required to be adjudicated before the appropriate forum and it cannot be convenient to decide in a writ proceeding. Moreover, as reiterated earlier, when the parties themselves had agreed before a forum for resolution of dispute and the agreement subsists, the writ court would not ordinarily invoke the writ jurisdiction.

15. We are unable to accept the submission of the learned

counsel for the petitioner that Section 9 application became infructuous by reason of issuance of letter of termination, as it was open for the petitioner even in the said proceeding to amend the reliefs that had been sought in the said proceeding. The amendment of the said proceeding may have been better for the petitioner**.** However, we make it clear that the disposal of the writ appeal shall not prevent the petitioner to take steps under the Act and to seek appropriate reliefs in the said proceeding. Any observation adverse to the petitioner for not entertaining the petition shall not stand in the way in a proceeding that may be initiated under the Act, and in the event the said proceedings are initiated, the appropriate forum shall decide the said matter strictly in accordance with law and without being uninfluenced by any observations made in this regard.

16. Since the summer recess shortly to commence early next week may stand in the way of the petitioner/appellant approaching the appropriate court for suitable reliefs, without prejudice to the rights and contentions of the parties, joint measurements shall take place and no coercive steps shall be taken for a period of six weeks or until further orders whichever is earlier.

The reason for granting such relief is the difficulty that the appellant is likely to face due to the summer vacation, and not on the merits of the case.

17. The learned counsel for the Mormugao Port Authority has submitted that they are in the process of retendering the work. However, we are not entering into the said issue. This order shall be restricted to any coercive measure against the appellant.

Accordingly, the writ appeal is disposed of.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge

smm