

## Arbitration Agreement Remains Valid After Contract Termination; Writ Court Interference Only in Cases of Arbitrary Termination: Bombay High Court

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### Introduction

In a recent judgment in *EBIX Cash Pvt. Ltd. v. State of Maharashtra*<sup>1</sup>, the High Court of Bombay ("**Bombay High Court**") addressed the scope of writ jurisdiction in contractual disputes involving state enterprises. The case revolved around the termination of a contract by the Aurangabad Smart City Development Corporation Limited and the subsequent challenge by the affected private company. This article examines the decision of the Bombay High Court.

### Brief Background

The petitioner, a private company, invoked the writ jurisdiction of the High Court of Bombay ("**Bombay High Court**"), challenging a termination notice dated 13.06.2023 ("**Termination Notice**"). By way of the Termination Notice, a contract ("**Contract**") for an e-ticketing system allotted to the petitioner for city buses in Aurangabad was terminated.

Pursuant to the petitioner participating in the tender process in 2019, the petitioner was awarded the Contract on 18.02.2020. The petitioner claimed to have implemented the Contract as per the tender conditions. As a result, a "Go Live Certificate" was issued by the Aurangabad Smart City Development Corporation Limited ("**ASCDCL**") on 01.11.2021. While the petitioner purports to have successfully implemented the Contract for over four years, ASCDCL, on 05.02.2024, issued a new tender ("**New Tender**") for procurement of Electronic Ticket Issuing Machines ("**ETIM**"). The scope of work in the existing Contract and the New Tender were similar. Given that the petitioner stood a chance of enduring considerable losses if the process in relation to the New Tender was permitted to continue, the petitioner approached the Bombay High Court.

As per ASCDCL, on 23.02.2024, it issued a show cause notice to the petitioner for terminating the Contract on two grounds. *Firstly*, ASCDCL claimed that there were penalties levied upon the petitioner company for the software's server being down and for other reasons. *Secondly*, the petitioner's ETIM could be used to print zero-value tickets, which caused losses to ASCDCL.

As per the petitioner, it promptly responded to the show cause notice on 26.02.2024 and stated that the software-related issues were resolved in 30 minutes and that the "*zero value ticket*" was a feature specified in the underlying tender documents. Despite having issued detailed responses and posed objections to the previous instances where the petitioner was fined, the petitioner claimed that ASCDCL ultimately terminated the Contract without providing any further reasons whatsoever. The petitioner made a case of wrongful and arbitrary termination of the Contract against ASCDCL. In this regard, the petitioner placed reliance upon a clause in the Contract that provided for the issuance of preliminary notice to the service provider to rectify the defects.

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<sup>1</sup> *EBIX Cash Pvt. Ltd. v. State of Maharashtra*, 2024 SCC OnLine Bom 2357.

ASCDCL allegedly ignored this procedure, making the Termination Notice invalid and subject to being set aside. The Petitioner argued that the High Court could review ASCDCL's actions, which it claimed were arbitrary, unreasonable, and unauthorised. Despite the contract containing an arbitration clause, the petitioner contended that the same would not prevent the High Court from hearing their writ petition.

To support its case, the petitioner placed reliance on the following three decisions:

- (i) ***Subodh Kumar Singh Rathour v. The Chief Executive Officer & Ors.***<sup>2</sup>
- (ii) ***M.P. Power Management Company Limited Jabalpur v. Sky Power Southeast Solar India Private Limited***<sup>3</sup>; and
- (iii) ***Uttar Pradesh Power Transmission Corporation Limited v. CG Power and Industrial Solutions Limited***<sup>4</sup>.

Upon examining the decisions mentioned above, the High Court opined that the following legal principles emerged:

- (i) Relief against the State or its instrumentalities in matters related to contractual obligations can be sought under the writ jurisdiction.
- (ii) The power to issue a writ under Article 226 is discretionary and plenary, and the same should only be exercised to set right the arbitrary actions of the State or its instrumentality in matters related to contractual obligation.
- (iii) Writ under Article 226 of the Constitution of India will also lie against a termination on a breach of contract, wherever such action is found either to be palpably unauthorised or arbitrary.
- (iv) Although the disputes arising purely out of contracts are not amenable to writ jurisdiction, when contractual power is being used for public purposes, it is undoubtedly amenable to judicial review.
- (v) The availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition.
- (vi) In matters concerning specific modalities of the contract – such as required work, execution methods, material quality, time frame and other aspects impacting the tender's purpose – the Courts usually refrain from interfering.
- (vii) Writ jurisdiction is discretionary, and the High Court usually refrains from entertaining a writ petition, which involves adjudication of disputed questions of fact that may require analysis of evidence from witnesses.

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<sup>2</sup> *Subodh Kumar Singh Rathour v. Chief Executive Officer*, 2024 SCC OnLine SC 1682.

<sup>3</sup> *M.P. Power Management Company Limited Jabalpur v. Sky Power Southeast Solar India Private Limited*, (2023) 2 SCC 703.

<sup>4</sup> *Uttar Pradesh Power Transmission Corporation Limited v. CG Power and Industrial Solutions Limited*, (2021) 6 SCC 15.

From a factual perspective, the High Court was of the view that a bare perusal of the documentary record would indicate the existence of disputed questions of facts between the parties. The High Court noted that ASCDCL had issued a preliminary termination notice, which referred to the relevant clause in the Contract. Thus, the High Court opined that the termination was within the contractual domain. Admittedly, the Contract, in its terms pertaining to dispute resolution, contained an arbitration clause.

In this regard, the High Court opined that regardless of the termination of the underlying agreement (the Contract), the arbitration clause would be deemed to have survived such termination on account of the separability presumption. In this regard, the High Court referred to the decision in ***SBI General Insurance Co. Ltd. v. Krish Spinning***<sup>5</sup> and ***National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd.***<sup>6</sup>.

In view of the above observations, the High Court found no reason to entertain the writ petition filed by the petitioner. Accordingly, the writ petition came to be dismissed.

## Comments

The High Court's decision highlights the nuanced balance between judicial intervention and adherence to contractual provisions including the arbitration clauses contained thereunder. By affirming the dismissal of the writ petition, the High Court has reinforced the principle that arbitration clauses survive contract termination. The judgment also clarifies that while the writ jurisdiction under Article 226 is broad and discretionary, it is reserved for clear instances of arbitrary state action. The ruling also highlights the judiciary's reluctance to interfere in complex contractual disputes involving factual determinations, thereby promoting the integrity and finality of arbitration agreements in public contracts.

## Contact

For any query, help or assistance, please reach out at [info@trinitychambers.in](mailto:info@trinitychambers.in) or visit us at [www.trinitychambers.in](http://www.trinitychambers.in).

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<sup>5</sup> *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 SCC OnLine SC 1754.

<sup>6</sup> *National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd.*, (2007) 5 SCC 692.