ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2605 of 2022
Masters Consulting Engineers (Pvt.) Limited
Versus
Federation of Pakistan and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.07.2022	**M/s Aftab Rashid and Haroon Ur Rashid, Advocates for the petitioner.**

Through the instant writ petition, the petitioner, Masters Consulting Engineers (Pvt.) Limited, impugns letter dated 29.04.2022 from the Federal Employees Benevolent and Group Insurance Funds / respondent No.3, terminating the contract for the Architectural Engineering Design / Drawing and Construction Supervision for the 90 Kanal Plot MA Johar Town, Lahore (“the Contract”).

2. The record shows that after participating in a competitive process, the petitioner was awarded the Contract and in this regard, letter of acceptance dated 28.03.2016 was issued by respondent No.3. The Contract between the petitioner and respondent No.3 was also executed. This Contract is annexed at page-56 of this petition. Clause 7 of the Contract titled “Settlement of Disputes” is reproduced herein below:-

> ***“7.1 Amicable Settlement***
> ***The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.***
>
> ***7.2 Dispute Settlement***
> ***Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party’s request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions of the Arbitration Act,***

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> ***1940 (Act No.X of 1940) and of the Rules made thereunder and any statutory modifications thereto.***
> ***Services under the Contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due to or by the Client shall be withheld on account of such proceedings."***

3. The petitioner's case is that respondent No.3 could not have terminated the Contract with immediate effect but should have resorted to the procedure provided in clause 2.9.1 by giving not less than thirty days written notice of termination to the petitioner so as to enable it to remedy any failure in the performance of its obligations.

4. Learned counsel for the petitioner submitted that respondent No.3's decision to terminate the Contract was without lawful authority and passed in violation of the principles of natural justice; and that such termination warranted interference by this Court in exercise of Constitutional jurisdiction. The petitioner has also prayed for a declaration to the effect that respondent No.3 had terminated the Contract by adopting a mechanism not envisaged by the terms of the Contract. In making his submissions, learned counsel for the petitioner has placed reliance on the judgment dated 14.07.2014 passed by this Court in writ petition No.1836/2000, whereby a writ was issued for the release of pending payments to a construction contract.

5. I have heard the contentions of the learned counsel for the petitioner.

6. After the State or its agents have entered into the field of the ordinary contract, the relations are no longer governed by the Constitutional provisions but by the legally valid contract which determines rights and obligations

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of the parties *inter se*. No question arises of violation of any Constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only. For matters relating to purely contractual breach and the rights that are governed only by the terms of the contract, no writ or order can be issued under Article 199 of the Constitution so as to compel the authorities to remedy a breach of contract pure and simple or to act strictly in accordance with the terms of the contract. The source of respondent No.3's right to terminate the Contract was contractual and not in purported exercise of a statutory power.

7. Ordinarily, the High Court, in exercise of its jurisdiction under Article 199 of the Constitution, does not entertain a petition filed by a petitioner seeking the enforcement of its rights under a contract executed with an instrumentality of the State. Although sub-constitutional legislation cannot curtail the jurisdiction of this Court under Article 199 of the Constitution, and there are numerous precedents where this Court has exercised its Constitutional jurisdiction in contractual matters where the executive acts in an irrational, illegal or procedurally irregular manner, or in excess of jurisdiction, the facts of the case at hand are not such where this Court ought to exercise its Constitutional jurisdiction.

8. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the Constitutional jurisdiction of the High Court for the issuance of a

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writ. It is also well settled that where there exists an arbitration agreement, the parties are required to get their disputes arising out of the contract adjudicated by the domestic forum created by them.

9. There is a catena of case law in support of proposition that where there is an arbitration clause in the contract between the parties, a writ petition cannot be instituted to question the termination of the contract and / or to seek specific performance of the contract. In the case of Mumtaz Ahmad Vs. Zila Council, Sahiwal (1999 SCMR 117), it has been held as follows:-

> ***"7. The petitioners had voluntarily executed the lease agreements without any duress, compulsion or threat and had not only agreed to pay instalments for the months of July, August and September, 1997 along with other dues, but had actually deposited the same at the time of assuming work under the lease agreements. They were, therefore, not justified to take exception to those payments at the fag-end of the lease period. Anyhow, if they had any grievance, they could have invoked the Arbitration clause and referred the matter to the Arbitrator or file appeal under the relevant rules, but in view of the availability of these remedies, they could not have invoked the writ jurisdiction. Hence, the Intra-Court Appeals filed by the petitioners were rightly dismissed and in consequence these petitions are dismissed."***
>
> **(Emphasis added)**

Law to the said effect has also been laid down by the Superior Courts in the cases of Abdul Qayyum Khan Vs. District Officer, Passenger and Freight (2003 MLD 670), Messrs Frontier Construction Company Vs. Bahauddin Zakariya University (2006 MLD 978), Muhammad Hayat Khan Vs. Tehsil Municipal Administration (2009 YLR 2259), Signage Security System Vs. CDA and others (2010 CLC 567), Mst. Zahida Maqbool Vs. Member (Colonies) Board of Revenue (2010 YLR 1734), Messrs Muhammad Siddiq Chaudhry Vs.

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Higher Education Commission (2011 CLC 863), Wajahat Ali Vs. Government of Khyber Pakhtunkhwa (2013 YLR 2132), N.A.A. Consulting Engineers Vs. Metropolitan Corporation (2014 MLD 1795), Gandapur Construction Company Vs. Government of Khyber Pakhtunkhwa (2014 CLD 400), Uch Power (Pvt.) Ltd. Vs. Government of Pakistan, Federal Board of Revenue (2017 PTD 1215), and M/s Bisra Stone Lime Company Limited Vs. Orissa State Electricity Board (AIR 1976 SC 127).

10. Bearing in mind the purely contractual dispute agitated by the petitioner in the instant petition as well as the dispute resolution mechanism enshrined in Clause 7 of the Contract, I am of the view that the primary dispute agitated by the petitioner in the instant writ petition is to be resolved in accordance with such mechanism agreed between the parties.

11. In view of the above, the instant petition is dismissed in *limine* as not maintainable. The petitioner is at liberty to agitate its grievance against the termination of the Contract before the appropriate forum.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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