

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 26TH OF JUNE, 2023**

**WRIT PETITION NO. 12656 OF 2023**

**BETWEEN:-**

**M/S MITRA DATA CARE, THROUGH  
PROPRIETOR PANKAJ RAI S/O SHRI MOHAN  
LAL RAI AGED ABOUT 46 YRS, R/O J.P. NAGAR  
ADHARTAL JABALPUR, M.P. OCCUPATION –  
PRIVATE JOB.**

**.....PETITIONER**

***(BY SMT. ANCHAN PANDEY - ADVOCATE)***

**AND**

- 1. THE CHIEF ELECTORAL OFFICER,  
NIRVACHAN SADAN, 17, ARERA HILLS,  
BHOPAL.**
- 2. THE ADDITIONAL CHIEF ELECTORAL  
OFFICER, M.P., NIRVACHAN SADAN, 17,  
ARERA HILLS, BHOPAL.**
- 3. THE COLLECTOR/DISTRICT ELECTORAL  
OFFICER, DISTRICT JABALPUR, M.P.**
- 4. THE COLLECTOR/DISTRICT ELECTORAL  
OFFICER, DISTRICT DAMOH, M.P.**
- 5. THE COLLECTOR/DISTRICT ELECTORAL  
OFFICER, DISTRICT KATNI, M.P.**
- 6. THE COLLECTOR/DISTRICT ELECTORAL  
OFFICER, DISTRICT SEONI, M.P.**
- 7. THE COLLECTOR/DISTRICT ELECTORAL  
OFFICER, DISTRICT ANUPPUR, M.P.**

**8. THE COLLECTOR/DISTRICT ELECTORAL OFFICER, DISTRICT SIDHI, M.P.**

**.....RESPONDENTS**

**(BY SHRI GIRISH KEKRE – GOVERNMENT ADVOCATE)**

*This petition coming on for admission this day, the court passed the following:*

**ORDER**

This petition has been filed under Article 226 of the Constitution of India questioning the validity of the order dated 05/07.06.2023 (Annexure P/1) passed by the respondents whereby the contract awarded to the petitioner has been terminated.

2. The challenge is made basically on the ground that the respondents are acting contrary to the agreed terms of the contract and compelling the petitioner to accept their illogical proposal as mentioned in Item No. 2 of the agreement whereby printing has to be made on both side of the page. The description and the approved rate of Item No. 2 is given in a table prepared in the agreement (Annexure P/2) i.e. “Photo Nirvachak Namawali Ka Mudran Dono Taraf (Double Side)”. For the sake of convenience, the relevant portion of the table is quoted below:

स.क्र.	कार्य का विवरण	प्रति	मेसर्स मित्र डाटा केयर, जबलपुर की न्यूनतम स्वीकृत दर (रूपये में)
1	फोटो निर्वाचक नामावली का मुद्रण एक तरफ (सिंगल साईड)	प्रति पृष्ठ	0.010
2	फोटो निर्वाचक नामावली का मुद्रण दोनो तरफ (डबल साईड)	प्रति पृष्ठ	1.250

However, learned counsel for the petitioner submits that the rate quoted

and approved for Item No.2 is for one side printing of a page and as such reverse side printing of the page does not include the same “Prashtha” (Page). According to the petitioner, both side printing of a page shall be treated to be two pages (Two Prashta).

3. Shri Kekre appearing for the respondents was directed to seek instructions and in response he has submitted a letter dated 13.01.2023 addressed to Collector-cum-District Election Officer of all the Districts clarifying that the Item which is quoted above and the rate shown for the same is a rate for printing both sides of a page and it should be treated to be one “Prashtha”. He also submits that even otherwise it is a dispute arising out of a contract and in this regard the terms and conditions of the agreement very categorically provide that in case any dispute arises or there is a breach of the terms of the contract, the decision of Collector-cum-District Election Officer would be final and binding upon the parties. He submits that as such this petition is not maintainable, the petitioner should approach the District Election Officer, which is the remedy available with the petitioner as per the terms of the agreement.

4. Shri Kekre further submits that the petition involves the disputed question of fact and as such in a matter of contract when disputed facts are involved, the petition under Article 226 of the Constitution is not maintainable.

5. I have considered the submission made by the parties and also perused the record and taken note of the letter dated 13.01.2023. The Item No.2, which has given rise to the present dispute, *prima-facie* provides rate of Rs.1.250 for both side printing of a page as is clear from the language of the said Item-“Photo Nirvachak Namawali Ka Mudran Dono Taraf (double side)-Prati Prashta-Rs.1.250”. Meaning thereby, the printing of double side has been considered to be “one Prashtha” for

which Rs. 1.250 is approved rate. As such, the stand taken by the respondents *prima-facie* appears to be proper because from a bare look of Item No. 1 of the same table mentioned in Clause-2 of the contract it is crystallized that for the same work of printing i.e. “Photo Nirvachak Namawali Ka Mudran Ek Taraf (single side)-Prati Prashta” much lower rate is approved i.e. Rs. 0.010. Even otherwise, it is a disputed fact and both the parties are interpreting the same term in different manner and therefore it is not proper for this Court to entertain this petition under Article 226 of the Constitution of India.

6. The Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation and another vs. Diamond & Gem Development Corporation Limited and another** reported in (2013) 5 SCC 470 has considered the aspect as to whether in a matter of contract where facts are disputed writ under Article 226 of the Constitution is maintainable or not. The Supreme Court has observed as under:-

**“III. Contractual disputes and Writ Jurisdiction**

19. There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, the writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties. [Vide Bareilly Development Authority v. Ajai Pal Singh [(1989) 2 SCC 116 : AIR 1989 SC 1076] and State of U.P. v. Bridge & Roof Co. (India) Ltd. [(1996) 6 SCC 22 : AIR 1996 SC 3515] ].

20. In Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293 : AIR 2000 SC 2573] this Court held that a writ cannot lie to resolve a disputed question of fact, particularly to interpret the disputed terms of a contract observing as under : (SCC pp. 298-99, paras 10-11)

“10. ... The interpretation and implementation of a

clause in a contract cannot be the subject-matter of a writ petition. ... If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. ....

11. ... The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. ... The contractor should have relegated to other remedies.”

21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist

proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

#### **IV. Interpretation of the terms of contract**

23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. [Vide *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal* [(2004) 8 SCC 644 : AIR 2004 SC 4794] and *Polymat India (P) Ltd. v. National Insurance Co. Ltd.* [(2005) 9 SCC 174 : AIR 2005 SC 286] ]

24. In *DLF Universal Ltd. v. Town and Country Planning Deptt.* [(2010) 14 SCC 1 : (2011) 4 SCC (Civ) 391 : AIR 2011 SC 1463] this Court held : (SCC pp. 14-15, paras 13-15)

“13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

14. As is stated in Anson's Law of Contract:

‘a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large.’

15. The Court assumes:

‘that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly.’ [Ed. : Anson's Law of Contract; Aharon Barak : Purposive Interpretation in Law, 2005, Princeton University Press.] ”

7. In view of the above observation and the law laid down by the Supreme Court, it is clear from the dispute involved in this case that there is an ambiguity in interpreting the terms of the contract and both the parties are giving different meaning to the said terms. Therefore, this

Court is of the opinion that the interpretation of a particular Clause or Item shown in the agreement is not so clear but ambiguous and hence a writ is not a proper remedy and that being so, I am not inclined to entertain this petition. However, the petitioner can approach the Collector-cum-District Election Officer and can raise dispute before the said authority in view of the terms and condition of the agreement.

8. It is also made clear that this Court has also entertained a petition i.e. WP No. 13427/2023- M/s Anshika Creation Rewa vs. Chief Electoral Officer, Madhya Pradesh & Ors but in the said petition interim relief is granted because on the date of granting interim relief there was no instruction received by the State Government and as such on the basis of material available the court has considered the claim of the petitioner and granted the relief, but now in view of the instructions received from the State Government, this Court is of the opinion that this petition is not maintainable and accordingly it is **dismissed** with the aforesaid observation.

9. However, it is made clear that any observation made by this Court in this order will not come in the way of the authority while deciding the dispute, if any raised before the same. It is further clarified that the observation of this Court will not prejudice the mind of the authority in deciding the dispute.

**(SANJAY DWIVEDI)**  
**JUDGE**