

**2023 STPL(Web) 39 HP  
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

**M/S AJAY KUMAR SOOD**

Petitioner

*VERSUS*

**STATE OF HIMACHAL PRADESH AND OTHERS**

Respondents

CWP No. 3418 of 2023-Decided on 24-7-2023

**Civil**

**(A) Government Contract – Non Payment of admitted bills –** Held: Since it is not in dispute that approximately Rs.1.00 Crore is payable to the petitioner, prayer made on behalf the petitioner made in the instant petition deserve to be allowed. Non-availability of funds cannot be a ground for not releasing the due and admissible claim of the petitioner. Consequently in view of above, present petition is allowed. Respondents are directed to release undisputed amount of Rs.1,17,08,009/-, enabling the petitioner to execute the remaining work at the site.

(Para 13, 14)

**(B) Arbitration and Conciliation Act, 1996 – Section 11 - Arbitration – When liability is admitted –**  
Then no arbitration

(Para 6, 7)

**(C) Writ – Maintainability of** – Government contract – Pending Payment – Liability admitted – Writ  
petition held to be maintainable.

(Para 6, 7)

Cases Referred:
ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. (2004) 3 SCC 553
ABL International supra, reiterated in Food Corporation of India v. SEIL Ltd. (2008) 3 SCC 440
Mr. Sharan on M/s. Burmah Construction Company v. The State of Orissa & Ors. [AIR 1962 SC 1320]

Advocate(s): For the petitioner: Mr. Sunil Mohan Goel, Advocate.

For the Respondents: Mr. Anoop Rattan, Advocate General with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General with Mr. Rahul Thakur and Mr. Ravi Chauhan, Deputy Advocates

**JUDGMENT**

**Sandeep Sharma, J. (Oral)**-By way of instant petition filed under Art. 226 of the Constitution of India, petitioner has prayed for the following main reliefs:

“a) That this Hon'ble Court may be pleased to issue writ of mandamus directing the respondents to immediately release the undisputed bills of the measured work done as prepared by the Executive Engineer, Dharampur Bharari i.e. respondent No.5 as Running Account Bill No.1 of

the work done as on 12.1.2023 (Annexure P-9) alongwith interest @ 12.75% which the petitioner are paying to the bank on the loan raised by them for execution of the work.

b) That this Hon'ble Court may further be pleased to issue writ of mandamus directing the respondent department to release the further running bills as and when the same are raised so that the work is completed in time bound manner.”

2. For having bird's eye view of the matter, certain undisputed fact, which are necessary for the adjudication of the present case, are that the petitioner, which is a registered Government Class A contractor/firm, with Himachal Pradesh Public Works Department, came to be awarded the work i.e. “Construction of Executive Engineer, Office and Residential Building of IPH(JSV) Division Dharampur Bharari in Tehsil Dharampur district Mandi (H.P.) (SH: Site Development C/O 1 No. Type-V Quarter, 2 No. Type-IV Quarter, 4 No. Type-III Quarter and 4 No. Type-II Quarters including Sanitary and electrical Installations)” for total cost of Rs.3,80,02,194/- with the condition that work shall be completed within one year to be reckoned from 15th day of issuance of letter of award, which otherwise forms part and parcel of the agreement.

3. On 9.3.2021, petitioner was issued letter of award and pursuant to terms and conditions of agreement, petitioner furnished bank guarantee of Rs.19,00,11,00/- to the respondents though, petitioner executed substantial work on the site after issuance of letter of award but since he was not paid bill amounting to Rs.1,17,08,009/- despite repeated requests, he was unable to complete work within stipulated time.

4. Though work is still being carried out by petitioner but at slow pace due to non-availability of funds. Since despite there being an admitted liability of department amounting to Rs. 1,17,08,009, it failed to pay the amount, petitioner has approached this court for the reliefs as have been reproduced herein above.

5. Pursuant to notices issued in the instant proceedings, respondents have filed reply, wherein apart from raising question of maintainability of petition at hand, it has been categorically admitted that Rs.1,17,08,009/- is payable to the petitioner but on account of non-availability of funds in financial year 2023-24, same could not be released. Apart from above, it has been stated that since bills were not submitted within time schedule, same could not be processed.

6. Having heard learned counsel for the parties and perused material available on record this court finds that there is a clear cut admission on the part of respondents that as of today, there is an admitted liability of Rs.1,17,08,009/- but Mr. Vishal Panwar, learned Additional Advocate General raised issue with regard to maintainability of the present petition. **He submitted that writ petition is not maintainable because dispute, if any, inter se parties is to be settled through arbitration as per terms and conditions of the agreement admittedly arrived inter se parties.** He further submitted that subject matter in dispute being civil dispute arising out of contract, otherwise cannot be decided in Civil Writ Petition filed under Art. 226 of the Constitution of India.

**7. Though it is not in dispute inter se parties, that in terms of agreement arrived inter se parties, dispute if any, qua non payment of bill is to be adjudicated by the arbitrator, if any appointed with the consent of parties or as per direction issued by the court under S. 11 of the Arbitration and Conciliation Act but once the liability is admitted and respondents have categorically admitted in their reply that as of today, Rs.1.00 Crore approx is payable to the petitioner, coupled with the fact that work is still in progress at the site, this court is unable to agree with aforesaid contention of Mr. Vishal Panwar, learned Additional Advocate General that the writ petition is not maintainable.**

8. True it is that in contract matter petition under Art. 226 is not maintainable but Hon'ble Apex Court in ABL International Ltd. v. Export Credit Guarantee Corp. of India Ltd. (2004) 3 SCC 553, has

categorically held that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit, rather, in writ petition, if the facts require, even oral evidence can be taken. Crux of the aforesaid judgment is that writ court has jurisdiction to entertain writ petition, where disputed questions of facts exist and there is no absolute bar for entertaining writ petition if the same arises of contractual obligations or involves disputed question of facts. Relevant paras of judgment supra, are reproduced herein:

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt.Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.

27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-

- (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
- (b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
- (c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

9. In the aforesaid judgment, it has been categorically held that in appropriate cases, a writ petition against State or instrumentalities of State, arising out of contractual obligation is maintainable even if some disputed questions of facts arise for consideration.

10. Hon'ble Apex Court, while placing reliance on ABL International supra, reiterated in Food Corporation of India v. SEIL Ltd. (2008) 3 SCC 440, that the matters involving public law elements, are amenable to writ jurisdiction. Relevant paras of the aforesaid judgment are reproduced herein under:

Para 21 to 25

“21. Jurisdiction of the High Court to entertain a writ application involving contractual matter was considered by a Bench of this Court in ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors. [(2004) 3 SCC553] wherein upon referring to a large number of decisions, it was held :

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent."

22. Reliance placed by Mr. Sharan on *M/s. Burmah Construction Company v. The State of Orissa & Ors.* [AIR 1962 SC 1320] is not apposite. Claim made therein was a pure money claim. It was in that situation observed that the High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract to pay an amount of money due to the claimant.

23. Article 14 of the Constitution of India has received a liberal interpretation over the years. Its scope has also been expanded by creative interpretation of the court. The law has developed in this field to a great extent. In this case, no disputed question of fact is involved.

24. The High Court, in an appropriate case, may grant such relief to which the writ petitioner would be entitled to in law as well as in equity.

25. We do not, thus, find any substance in the contention of Mr. Sharan that while exercising its review jurisdiction, no interest on the principal sum could have been directed to be granted by the High Court. A writ court exercises its power of Review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of *actus curiae neminem gravabit* (An act of the courts shall prejudice none). We appreciate the manner in which the learned Judge accepted his mistake and granted relief to the respondents.”

11. High court of Telangana had an occasion to deal with similar facts as exist in present case while rendering judgment dated 22.3.2022 in Writ Petition No. 2511 of 202. In the said judgment, High Court of Telangana held that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable. High Court of Telangana, while returning aforesaid finding also specifically placed reliance upon judgment rendered by Hon'ble Apex Court in *ABL International supra*. Relevant para of the aforesaid judgment is reproduced herein below:

“13. This Court opine that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, we hold that the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable.”

12. Leaving everything aside, this court finds that it is none of case of the respondents that at present there is dispute, if any, inter se parties on account of non-execution of the work at site by the petitioner rather it is an admitted case of the parties that petitioner is still continuing with the work but at a slow pace. This court cannot lose sight of the fact that the contractor cannot be made to work without funds. Since he has not been paid said amount, he cannot be expected to continue with work without availability of funds.

13. Since it is not in dispute that approximately Rs.1.00 Crore is payable to the petitioner, prayer made on behalf the petitioner made in the instant petition deserve to be allowed. Non-availability of funds cannot be a ground for not releasing the due and admissible claim of the petitioner.

14. Consequently in view of above, present petition is allowed. Respondents are directed to release undisputed amount of Rs.1,17,08,009/-, enabling the petitioner to execute the remaining work at the site. Needful, in terms of instant order shall be done by the respondents expeditiously, preferably within a

period of six weeks from today and in future, contractor shall be paid bills as and when the same are submitted.

15. The petition stands disposed of in the afore terms, alongwith all pending applications.

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