IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.13564 of 2026
Date of Decision: 9.9.2026

Rajesh Kumar

.....Petitioner

Versus

State of Himachal Pradesh and Ors.

.....Respondents

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the Petitioner: Mr. Ram Lal Thakur, Advocate.

For the Respondent: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, J. *(Oral)*

By way of instant petition, petitioner has prayed for following main reliefs:

> *"i) That writ in the nature of mandamus may kindly be issued, directing the respondents to make payment of the due amount i.e. 2,99,187/- qua the works in question, bills whereof have already been submitted by the petitioner and duly passed by the respondents vide (Annexure P-1), within time bound period.*
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> *ii) That writ in the nature of mandamus may kindly be issued, directing the respondents to pay the petitioner interest @ 18% per annum on the aforesaid due amount from the due date till actual payment."*

2. Precisely, facts of the case, as emerge from the pleadings adduced on record by the respective parties, are that petitioner, who is registered as a Class-D Contractor with Himachal Pradesh Public Works Department, was awarded the following works:

Sr. No.	Name of Work	Award Letter No. and Date	Tenders amount	Passed bill amount	MB No. & Page
1.	C/o Link road Bharati to Harien Basti Biddi pipli Ropa Rosso via Lagwal Basti km. 0/0 to 3/390 (SH:P/L Salong and C/O CC pavement in km. 0/035 to 0/070	PW-TSD/ Tender/2021-22-1116-22 Dated 29/07/2022	1,11,307	1,08,995	1818/ P-19
2.	C/o Link road Bharati to Harien Basti Biddi pipli Ropa Rosso via Lagwal Basti km. 0/0 to 3/390 (SH:P/L Salong and C/O CC pavement in km. 0/070 to 0/105	PW-TSD/ Tender/2021-22-1123-29 Dated 29/07/2022	1,11,307	1,08,823	1818/ P-21
3.	R/R Damages on Bharati to Harien Basti Biddi pipli Ropa Rosso via Lagwal basti Khouda Bharati km 0/0 to 3/390 (SH: embankment filling behind R/wall at rd 0/350	PW-TSD/ Tender/2022-23-1959-65 dated 21.09.2022	83,440	81,369	1818/ P23
Total				2,99,187	

Though in terms of agreement executed inter se petitioner as well as Public Works Department, petitioner has executed all the aforesaid works, but since his bills are not being cleared, he is compelled to approach this Court in the instant proceedings.

3. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Ram Lal Thakur, Advocate, is that though final bills submitted by the petitioner qua execution of works as detailed hereinabove, stand passed by the competent authority after due measurement (Annexure P-1), but still, meager sum of Rs. 3.00 Lakh is not being paid, as a result of which, the petitioner is in financial distress.

4. Pursuant to notices issued in the instant proceedings, respondent-State has filed reply/instructions under the signatures of Superintending Engineer, Dharampur Circle, HPPWD, Dharampur, wherein facts as have been noted hereinabove have not been disputed, rather stand admitted. It has been specifically averred in the reply that after execution of works, bills were prepared and passed by respondent No. 6, but payment could not be made for afore three works on account of paucity of funds. It is further averred in the reply that respondent No. 2, vide office letter dated 24.08.2026, requested the higher authorities for arrangement of funds amounting to Rs. 3,05,291/- under the relevant head, but till date, same has not been received.

5. It is apparent from the pleadings adduced on record that works for which payment is being demanded were completed by the petitioner in the year 2022, but even after expiry of four years, respondents have not

released meager amount of Rs. 3 Lakh, as a result thereof, petitioner, who is a petty contractor, is finding it difficult to sustain. Since amount as is being claimed already stands verified by the respondents, coupled with the fact that such amount has been duly admitted by the respondents, this Court sees no impediment in ordering release of the same in a time bound manner.

6. Though it is not in dispute inter se parties, that in terms of agreement arrived inter se them, 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 Section 11 of the Arbitration and Conciliation Act but once there is no dispute qua the liability of the respondents and as of today, Rs. 3.00 lakh is payable to the petitioner, this Court sees no impediment in considering the prayer of the petitioner, while exercising power under Article 226 of the Constitution of India. Aforesaid issue has already been settled by the Hon'ble Apex Court in **ABL International Ltd. Vs. Export Credit Guarantee Corpn. of India Ltd. (2004) 3 SCC 5553**, whereby Hon'ble Apex Court 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 out 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.
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> 27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-
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> (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.
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> (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."

7. 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.

8. 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:

> "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 :
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> "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 above said 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."

9. High court of Andhra Pradesh 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 2022. In the said judgment, High Court of Andhra Pradesh 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 Andhra Pradesh, while returning aforesaid finding also 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."

10. Leaving everything aside, once the liability to pay the amount, sought to be released through instant petition, is admitted, coupled with the fact that some amount had become due to the petitioner in the year 2022, this Court sees no impediment in exercising power under Article 226

of the Constitution of India, thereby directing the respondent-department to pay the balance amount to the tune of Rs. 3,05,291/-, to the petitioner expeditiously, preferably within a period of six weeks, failing which, petitioner would be entitled to interest at the rate of 6% per annum from the date of afore amount had actually become due to the petitioner. Ordered accordingly. The writ petition stands disposed of in the aforesaid terms, along with any pending application(s).

11. List for compliance on 3.11.2026.

September 9, 2026 **(Sandeep Sharma),**
(manjit) **Judge**