IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.11119 of 2025

Date of Decision: 01.09.2026

M/s NDN Constructions ……Petitioners

Versus

State of Himachal Pradesh & others … Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Mr. Suneet Goel, Senior Advocate with Mr. Vivek Negi, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge(oral):

Petitioner herein, which is a partnership concern enlisted as a Class-A contractor with the Public Works Department, is compelled to approach this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein to issue directions to the respondents to pay its outstanding amount.

2. Though, vide order dated 11.07.2025, this Court had directed the respondent-State to file reply, but fact remains that more than one year has passed, but till date, neither the reply has been filed nor the relief, as prayed for, has been granted to the petitioner

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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and as such, this Court has no option, but to decide the petition on the basis of the material already available on record.

3. Precisely, the facts of the case, as emerge from the pleadings adduced on record by the respective parties, are that petitioner, which is enlisted as a Class-A contractor with the Public Works Department, was awarded work of construction of 08 No. Type-II Quarters, 24 No. Type-III Quarters and 08 No. Type-IV Quarters at Civil Hospital, Sundernagar, District Mandi, Himachal Pradesh (SH. C/O 08 No. Type-II Quarters, 08 No. Type-III Quarters and 08 No. Type-IV Quarters including WS & SI), vide award letter dated 26.02.2021 for a total sum of Rs. 5, 55, 55,500/-. As per the terms and conditions of the agreement executed *inter se* parties, the stipulated time for completion of the work in question was 18 months to be reckoned from the 15th day of the issuance of the Letter of Award. The stipulated date of commencement of work was 13.03.2021 and the work was to be completed on 12.09.2022. At the time of filing of the petition, the work was in progress, but the same could not be completed for want of drawings, designs, and instructions. Besides above, there was shortage of material to be supplied by the respondents departmentally and permission was also granted to the petitioner to purchase the material from the open market during execution of the work, but fact remains that for want of

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funds, the work could not be completed. However, petitioner submitted as many as 11 running bills, but payment of 11th running bill, which has been duly verified and passed for Rs. 64,58,414/-, has not been made till date. Copy of approval of respondent No. 4 on the 11th running bill has been placed on record as **Annexure P-4**.

4. Careful perusal of aforesaid communication clearly reveals that gross amount payable to the petitioner was Rs. 3,94,38,255/-, out of which Rs. 3,29,79,841/- stands paid, but as of today, sum of Rs. 64,58,414/- is payable. Aforesaid 11th running bill, out of which, substantial amount has been paid, was actually prepared in the year 2024, but yet sum of Rs. 64,58,414 is payable.

5. Learned Senior counsel representing the petitioner submits that once aforesaid amount is admitted, coupled with the fact that respondent-department has no funds to proceed with the work, this Court, while exercising power under Article 226 of Constitution of India, can always direct the respondents to release the payment, so that petitioner is saved from undue hardship. He states that petitioner has raised loan, which is required to be repaid, but on account of delay in payment, huge interest has accrued on loan amount, as a result thereof, petitioner is facing acute financial distress.

6. Mr. Vishal Panwar, learned Additional Advocate General, while fairly admitting factum with regard to preparation of 11th running

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bill, admits the amount, as is being claimed to be paid by the Department, but states that same could not be disbursed solely for want of adequate funds. He states that the department has already raised demand in the month of August, 2025, but till date, amount has been not released, as a result thereof, department is finding it difficult to clear the outstanding liability of the petitioner.

7. 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. 64,58,414 /- 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

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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 :-
>
> (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."

8. 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.

9. Hon'ble Apex Court, while placing reliance on ABL International supra, reiterated in **Food Corporation of India v. SEIL**

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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 :
> "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."

10. High court of Andhra Pradesh had an occasion to deal with similar facts as exist in present case while rendering judgment

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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."

11. 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 2024, 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. 64,58,414 to the petitioner expeditiously, preferably within a period of three months, failing which, petitioner would be entitled to interest at the rate of 6% per annum from the date

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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).

(Sandeep Sharma),
Judge

September 01,2026
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