

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 40
Neutral Citation No. - 2025:AHC:7676-DB

WRIT-C NO. 32144 OF 2021

M/S ANNAPURNA CONSTRUCTION CO.

v.

STATE OF UTTAR PRADESH AND OTHERS

For the Petitioner : Sri Girish Chandra, Advocate
For the Respondents : Sri Mukul Tripathi, Standing Counsel
Sri Vivek Saran, Advocate

Last heard on January 6, 2025
Pronounced on January 17, 2025

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE VIPIN CHANDRA DIXIT, J.

(Pronounced by Hon'ble Shekhar B. Saraf, J.)

1. The present petition has been filed under 226 of the Constitution of India seeking issuance of a writ of mandamus directing the State respondent to release the payment for the contractual work done by the petitioner with regard to the work orders given by the Respondent No. 4/The Project Manager, Slum Urban Development Authority, on behalf of State Government under the contract.
2. The factual matrix of the case is delineated below:

- a. The petitioner is a registered contractor with the Public Works Department, Kanpur, who was awarded work for the construction of residence under the Basic Services to the Urban Poor Yojana at Kishanpur, Kanpur Nagar, which was introduced as a reform under a scheme namely 'Jawaharlal Nehru National Urban Renewal Mission' launched by the Union Government for urban poor under the slum development program. The funding pattern for this scheme was, 30% participation by the Union Government and 70% by the State Government.
- b. Vide work orders dated February 3, 2014 and March 4, 2014, the petitioner was tasked with the construction of houses by the Respondent No.3 under the said Yojna in Kishanpur, Kanpur Nagar.
- c. The petitioner completed the construction work within the stipulated period under the supervision of the Project Manager (Respondent No. 4). The work was verified through spot visits by Respondent No. 3 and the Project Manager.
- d. Upon satisfaction, the houses were handed over to allottees in multiple phases between June 18, 2014 to June 17, 2015, with proper documentation maintained and submitted to respondent authorities.
- e. Bills amounting to Rs.15,81,540/- were submitted on June 17, 2014, which were duly scrutinized and passed by the concerned authorities. Additionally, the petitioner claims that a security deposit of Rs. 96,000/- remains unreleased.
- f. The petitioner was also directed to complete additional work (sewer line, window fitting, and brick flooring) without a formal work order. Despite completion and verification of this work, neither was a work order created nor bills processed.

- g. Completion certificate was issued on December 27, 2019.
- h. Multiple representations were made by the petitioner since October 16, 2015, but payment remains pending. Through letter dated March 4, 2020, the unit in-charge informed that old payments cannot be processed as per state level authorities.

CONTENTION OF THE PETITIONER

3. Sri Girish Chandra, counsel appearing on behalf of the petitioner has made the following submissions:

- i. The petitioner had completed the entire work in the year 2014 and after inspection, bills were duly submitted, also quality of work was found to be in consonance to the norms and standards of the terms and conditions mentioned in the contract but the authority had not made any payment for the executed work.
- ii. The bills raised against the work order were duly approved by the Additional Project Manager/Sub Engineer, who are the competent authority, therefore, the same is liable to be paid.
- iii. As per the procedure under clause 15 of the terms and condition of the work order, any dispute arising out of the contract shall be decided by the officer in-charge of unit only and the decision shall be final but the authority had neither decided the representation of the petitioner nor paid the amount.
- iv. The State authority cannot deny payment for work done and financial constraint is not a valid defence on the part of the respondents authority.

CONTENTION OF THE RESPONDENTS

4. Sri Vivek Saran and Sri Mukul Tripathi, counsel appearing on behalf respondents have made the following submissions:

- i. Pursuant to the execution of alleged work order for construction

of houses, the bill amounting to Rs.15,81,540/- had been raised by the petitioner and the payments had already been made to the petitioner. Since the said bill was again presented before the respondents therefore, the same was rejected by the then Engineer on the ground of being already paid. So far as the payment of security amount is concerned, it had not been paid due to shortcomings found during the spot inspection of the work done.

- ii. Bills, which have been raised by the petitioner, were not approved by the competent authority and the Sub-Engineer, who has allegedly signed the said bills was under suspension during that time, therefore, that would not be treated as bills approved by the competent authority. Hence, the said bills can not be claimed to be admitted one. Notice was also issued to the Sub-Engineer on complained made by the petitioner.
- iii. Other bills of the petitioner issued by the U.P. Rajkiya Nirman Nigam Limited, were subject to the verification by the Resident Engineer which has not been done. Hence, the payment of the bills has not been made.

ANALYSIS AND CONCLUSION

5. Upon hearing the learned counsel appearing on behalf of the parties and upon perusal of the records, this Court is of the view that there is dispute of fact with regard to the payment having been made for execution of the work.

6. Counsel appearing on behalf of petitioner submits that the payment of work and security amount has not been made till date and if the payment has been made then the Respondent should show the mode of payment.

7. Per contra, counsel on behalf of respondents submit that the payment of executed work has already been made to the petitioner but security amount has been retained due to some shortcomings found in the executed

work.

8. The Supreme Court in the case of **Kerala SEB v. Kurien E. Kalathil** reported in **(2000) 6 SCC 293** has held that writ court is not the proper forum for resolution of disputes in contractual matters. The relevant paragraph is delineated below:

“10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. 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. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.”

9. The Supreme Court in the case of **Orissa Agro Industries Corpn. Ltd. v. Bharati Industries** reported in **(2005) 12 SCC 725** dealt with the maintainability of a petition under Article 226 specifically on disputed questions of fact involved in contractual matters. The relevant paragraphs are delineated below:

“7. A bare perusal of the High Court's judgment shows that there was clear non-application of mind. On one hand the High Court observed that the disputed questions cannot be gone into a writ petition. It was also noticed that the essence of the dispute was breach of contract. After coming to the above conclusions the High Court should have dismissed the writ petition. Surprisingly, the High Court proceeded to examine the case solely on the writ petitioner's assertion and on a very curious reasoning that though the appellant Corporation claimed that the value of articles lifted was nearly Rs 14.90 lakhs no details were specifically given. From the counter-affidavit filed before the High Court it is crystal-clear that relevant

details disputing claim of the writ petitioner were given. Value of articles lifted by the writ petitioner is a disputed factual question. Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition. As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinised and in such a case writ jurisdiction should not be exercised.

9. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible.”

10. The coordinate Bench of this Court in the case of **M/S Bio Tech System v. State Of U.P. and Others** reported in **(2020) 11 ADJ 488DB** has emphasised the limited power of the writ court exercising obligation in contractual matters . The relevant paragraphs are delineated below:

“39. The general principles which may be culled out from the aforementioned judgments is that in a case where the contract entered into between the State and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations the contractual obligations are matters of private law and a writ would not lie to enforce a civil liability arising purely out of a contract. The proper remedy in such cases would be to file a civil suit for claiming damages, injunctions or specific performance or such appropriate reliefs in a civil court. Pure contractual obligation in the absence of any statutory complexion would not be enforceable through a writ.

40. The remedy under Article 226 of the Constitution being an extraordinary remedy, it is not intended to be used for the purpose of declaring private rights of the parties. In the case of enforcement of contractual rights and liabilities the normal remedy of filing a civil suit being available to the aggrieved party, this Court may not exercise its prerogative writ jurisdiction to enforce such contractual

obligations.”

11. The Supreme Court in a recent case of **Union of India v. Puna Hinda** reported in **(2021) 10 SCC 690** has further held that the jurisdiction of High Court under Article 226 of the Constitution of India is wide, but pure contractual matters in field of private law, having no statutory flavour, are better adjudicated upon by forum agreed to by parties. Dispute could not be raised by way of a writ petition on disputed question of facts. The relevant paragraphs are delineated below:

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads.

25. A perusal of the matter shows that collusion of some of the officers of the appellants with the contractor cannot be ruled out. Such collusion seems to be the basis of the writ petition filed before the High Court.”

12. In the present factual matrix, the petitioner has not been able to bring on record any document wherein the respondent authorities have admitted that a particular sum is owed to them. On the contrary, the respondents have disputed the claim of the petitioner in their counter affidavit. One has to keep in mind that when disputed questions of fact are present, the writ jurisdiction is not the viable forum, as such disputes cannot be decided upon bare exchange of affidavits. As clearly enunciated in the judgments cited

above, in areas of contractual disputes, parties have to approach the civil courts or go for arbitration (if provided for). The writ court would only in exceptional circumstances, when the outstanding payments are admitted by the respondents, enter into the arena and pass a writ of mandamus and in no other case.

13. Accordingly, the writ petition is dismissed.

17.01.2025

Kuldeep

(Vipin Chandra Dixit, J.)

(Shekhar B. Saraf, J.)