

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(W.P.(C)) No. 357 of 2023

[Ref.: W.P.(C) No. 358 of 2023]

1. The State of Manipur, represented through the Secretary/Commission (works), Works Department, Secretariat, Babupara, Imphal, Manipur - 795001.
2. The Chief Engineer (Building), Public Works Department, Khuyathong, Imphal, Manipur – 795001.
3. The Executive Engineer, Building Division No. 1, Public Works Department, Khuyathong, Imphal, Manipur – 795001.

.... Applicants

- Versus -

M/s Sri Avantika Contractors (I) Ltd., represented by its authorized representative, Office at 610-B, Nilgiri Block, Aditya Enclave, Ameerpet, Hyderabad – 500038.

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the applicant : Mr. Lenin Hijam, Advocate General
Mr. O. Ratankumar, Deputy Govt. Advocate

For the respondents : Mr. Ajit Kumar Sinha, Sr. Advocate
Mr. T. Momo, Advocate

Date of hearing : 29.01.2024 & 14.06.2024
Date of Judgment & order : **18.07.2024**

JUDGMENT&ORDER
(CAV)

[1] Heard Mr. Lenin Hijam, learned Advocate General, Manipur assisted by Mr. O. Ratankumar, learned Deputy Government Advocate appearing for the applicants/respondents and Mr. Ajit Kumar Sinha, learned senior counsel assisted by Mr. T. Momo, learned counsel appearing for the respondent/petitioner.

[2] The above referred W.P.(C) No. 358 of 2023 was filed by the respondent/petitioner under Article 226 of the Constitution of India with the following prayers:

- (i) *Issue a Rule-in-Nisi;*
- (ii) *Call for record of the case, hear the parties and make the Rule absolute;*
- (iii) *Issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ/ direction (s)/ order(s) to quash/set aside the letter No. EE/BD-I/ Civil Sectt/ 2022-23/ 1069 dated 11.04.2023 issued by the Respondent No. 3, whereby the Agreement No. EE/BD-I/AGRT/2021-22/01, dt. 08.06.2021 was terminated by the respondent no.3;*
- (iv) *Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ/ direction(s)/ order(s) to direct the Official Respondents to allow the petitioner to continue with execution of the works mentioned in the Agreement No. EE/BD-I/AGRT/2021-22/01 dt. 08.06.2021;*
- (v) *Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ/ direction(s)/ order(s) to direct the official respondents not to re-tender the work mentioned in the Agreement No.EE/BD-I/AGRT/2021-22/01 dt. 08.06.2021 which was validly and lawfully awarded to the petitioner;*
- (vi) *Pass any other appropriate order/ direction that this Hon'ble Court deems fit and just in the interest of justice;*

(vii) *Award cost of the Petition to the petitioner;*

In the interim:

(viii) *Pending disposal of the matter your Lordships may be pleased to:*

(a) *Grant ad-interim ex-parte stay of the letter No. EE/BD-I/Civil Sectt(2022-23/1069 dated 11.04.2023 issued by the respondent no.3 whereby the agreement No.EE/BD-I/AGRT/2021-22/01 dt. 08.06.2021 was terminated by the respondent no.3;*

(b) *Pass an interim order directing the official respondents not to re-tender the work mentioned in the Agreement no. EE/BD-I/AGRT/2021-22/01 dt. 08.06.2021 which was validly and lawfully awarded to the petitioner;*

(c) *Pass an interim order directing the official respondents not to allow any third party or the PWD, Manipur to carry out the work mentioned in the Agreement No. EE/BD-I/AGRT/2021-22/01 dt. 08.06.2021 during the pendency of the present writ petition."*

[3] The learned counsel for the respondent/petitioner submitted that the petitioner is a certified ISO 9001-2015 engineering company delivering heavy EPC projects and significant importance and national reputation for the past two decades. On 09.03.2021, the third respondent issued e-tender notice inviting composite bids in two bids system from eligible contractors for construction of capital complex (Civil Secretariat Component) at Mantripukhri, Imphal (balance work). Pursuant to the said notice, the petitioner participated in the e-tender process. The petitioner, being the lowest bidder having fulfilled all terms and conditions of the tender, allotted the said work. The third applicant/respondent issued an acceptance letter dated 27.05.2021 awarding the said

work to the petitioner at the negotiated amount of Rs. 1,67,40,96,700/- which is inclusive of 12% GST of civil works, 18% GST for IEL works and 15 labourcess which is 2% reduction from the originally quoted amount of Rs. 170,82,61,939.22. In the said letter, the respondent/petitioner was required to submit performance guarantee of Rs. 5,02,22,901/- amounting to 3% the tendered value of the work. The petitioner had also executed the performance security bank guarantee for the said amount in favour of the third applicant/respondent. Pursuant to the acceptance for the work order and letter of acceptance, an agreement dated 08.06.2021 was executed between the respondent/petitioner and the third applicants/respondents and the period for completion of work was fixed as 12 months (02.06.2021 to 01.06.2022). The petitioner executed 17 bank guarantees in favour of the third applicants/respondents and the same was also communicated to the applicants/respondents. According to the regulations, the site must be handed over with complete construction-ready plans encompassing the tendered scope of project. The work was initially awarded to M/s Simplex Projects Limited in October, 2010. However, the said company was not able to complete the project within the stipulated period and, therefore, the contract was terminated on 02.11.2019. Thereafter, the applicants/respondents issued notice inviting tender on 28.12.2019, which was challenged by M/s. Simplex Projects Limited, which went to filing of WA No. 39

of 2020 and, this Court, on 13.01.2021, directed the parties to have a final joint measurement and after completion of the joint measurement, liberty was given to the applicants/respondents State to proceed with construction of the Civil Secretariat Complex by following the required formalities and procedures. Thereafter, the remaining work was awarded to the respondent/petitioner.

[4] The learned counsel for the respondent/petitioner submitted that the respondent/petitioner was compelled to execute the work in compliance with the modifications and enhancements made to the specifications and branding from multiple perspectives leading to delays and missed milestones. In fact, the department disposed of numerous profitable products, for example CCTV, data network system and the aforesaid changes necessitated a re-thinking of the department's strategies, which had to be adjusted to accommodate the changing environment. The learned counsel would further submit that the site was handed over in a deplorable condition with a great deal of thick jungle and debris and in a disorderly fashion. The removal and correction works caused huge amount of money and time to the respondent/petitioner and the said extra work amount has not yet been paid to the respondent/petitioner till date. He further submitted that the work was awarded during pre and post-first Covid eras and the work did not begin until after Covid pandemic was under control. When the respondent/petitioner decided to re-start the work, the second wave

began and the respondent/petitioner was not able to start the work and, in fact, the respondent/petitioner wrote several letters to the applicants/respondents stating Covid issues, he further submitted that as instructed by the Department concerned, number of extra items have been completed at the site and, in this regard, the respondent/petitioner had submitted a detailed estimate during September, 2021. After deliberation and reviews by various departmental personnel, the department approved certain items, leaving around sixty items pending for approval.

[5] The learned counsel for the respondent/petitioner submitted further that the respondent/petitioner had problems in procuring the granite of particular colour and after addressing several letters to the applicants/respondents, the applicants/respondents approved the substitute colour. The respondent/petitioner had also submitted TDS and rate analysis for various civil and MEP extra items and change of specification substitute items, which was also discussed. That apart, the respondent/petitioner had various problems qua UPVC windows, SS railing, tiles, lifts, DG set, street lamp post, sanitary works, STP functions and landscape design which contributed to further delay in completion of the work and the applicants/respondents officials are lethargic in solving the said problems. The learned counsel added that the respondent/petitioner has already taken steps to start the work and, on 06.11.2021, the respondent/petitioner addressed a

letter to the authorities of PWD bringing the unfortunate situation to light. Further, contrary to the agreement, the applicants/respondents authorities descope the work of data networking and CCTV cabling at the site and put pressure on the respondent/petitioner to complete the work earlier than the stipulated time period.

[6] The learned counsel for the respondent/petitioner then submitted that in the mean while the newly elected Government which came to power had given pressure on the respondent/petitioner to complete the project prior in time for inauguration. Even then, the applicants/respondents authorities did not take steps to facilitate such faster rate of work by the respondent/petitioner. On 24.05.2022, the third applicant/respondent granted provisional time extension of the said work up 30.09.2022 without prejudice to the right of the Government to recover liquidated damages in accordance with the provisions of Clause 5 of the MPWD General Conditions of Contract, 2020 of the agreement dated 08.06.2021. On 04.06.2022, the respondent/petitioner addressed a letter to the third applicant/respondent giving details of various factors which had led to the delay in project completion, even after making best efforts to complete the work inspite of hindrances faced by the respondent/petitioner, to the shock and surprise, the third applicant/respondent sent intimations to the respondent/petitioner

for slow progress of work and the said letters were suitably replied by the respondent/petitioner.

[7] The learned counsel for the respondent/petitioner further submitted that the respondent/petitioner had continue to execute the work within the extension period and beyond also which was within the knowledge of the department and RA bills were also paid during the said period. In fact, the last RA bill was paid on 06.12.2022. The respondent/petitioner was diligently carrying on works at the site and about 95% of the works at the site are complete. Out of the total bill of Rs. 100.78 crore submitted by the respondent/petitioner, the department has only paid Rs. 69.11 crore and there is outstanding of Rs.31.67 crore due. That apart, the respondent/petitioner had also sought approval on a large number of deviation items, which have still not been considered by the department and remains actionable at the end of Public Works Department.

[8] The learned counsel for the respondent/petitioner further submit that the respondent/petitioner was served show cause notices in respect of the work and the respondent/petitioner has submitted its reply to the show cause notices. The delay in completing the balance work was a subject matter of public interest litigation in PIL No. 34 of 2022 and the said PIL was disposed of by this Court on 04.04.2023. While so, on 11.04.2023, the third applicant/respondent issued the impugned order terminating the

agreement dated 08.06.2021 executed between the respondent/petitioner and the third applicant/respondent. The respondent/petitioner submitted reply dated 13.04.2023 stating that the department had not fulfilled its fundamental obligations and had committed fundamental breach of agreement. However, there was no response from the third applicant/respondent, which necessitated the respondent/petitioner in filing the present writ petition. Thus, a prayer has been made to set aside the impugned termination order and to allow the respondent/petitioner to continue with the execution of the work allotted to the respondent/petitioner, coupled with a prayer not to vacate the interim order dated 19.04.2023 granted by this Court. However, vide order dated 01.08.2023 this Hon'ble Court vacated the order dated 19.04.2023 by passing the following order.

"46. As stated supra, the third respondent decided to conduct a joint measurement of the work done by the petitioner. In the factual scenario put forth by the respective parties, if joint measurement is conducted, no prejudice would be caused to the petitioner and if joint measured is conducted, it will be helpful for the Court to know about the exact work executed at the ground level by the petitioner and based on the report, further steps can be taken in this matter. Moreover, the third respondent has every right to conduct joint measurement to assess the work executed by the contractor at the site. The aforesaid observation of this Court is only in the interest of both parties and for the welfare of the public scheme and the public money involved for construction of Civil Secretariat. Therefore, keeping the writ petition pending, the respondent authorities are directed to conduct joint measurement in order to assess the construction work and the other work done and executed by the petitioner at the site. For the purpose of conducting joint measurement, the interim order dated 19.4.2023 needs to be vacated enabling the respondent authorities to carry out the joint

*measurement. Therefore, in the interest of justice and without prejudice to the rights and contentions of the respective parties in the main writ petition, this Court is inclined to vacate the interim order dated **19.4.2023 passed in the writ petition.***

47. For the reasons stated supra, the interim order dated 19.4.203 granted by this Court in the writ petition stands vacated. The respondent authorities are directed to conduct the joint measurement as stated in the impugned order dated 11.04.2023 and file a report before this Court before the date of hearing on 04.09.2023."

Again on the same day this Hon'ble Court passed another interim order and the same is extracted hereunder;

"3. After delivering the order by this Court, Mr. T. Momo, learned counsel for the petitioner represented that till the joint measurement is taken place, both the parties may be directed to maintain the status quo as on today.

4. Therefore, till the joint measurement is taken place, both the parties are directed to maintain the status quo as on today."

[9] Being aggrieved, the present applicants (who are the respondents No. 1, 2 and 3 in the above referred writ petition being WP(C) No. 358 of 2023) filed Misc. application No. 357 of 2023 praying for vacation/modification of interim orders dated 01.08.2023, dated 09.10.2023 passed in the instant writ petition being WP(C) No. 358 of 2023 and its subsequent orders on the ground that there is question of disputed facts that the same may be allowed to deal in accordance with the Arbitration clause as per the Contract Agreement thereby allowing the Government to complete the project by itself in view of the public necessity involved in the project, with the following prayer:

- i) to vacate/modify the interim orders dated 01.08.2023 and dated 09.10.2023 and its subsequent extension orders passed in the instant writ petition being WP(C) No. 358 of 2023.*
- ii) to dismiss the present writ petition as not maintainable due to the disputed question of facts involved in the present case.*
- iii) to refer the case for Arbitration as provided in Clause 25 of the Contract Agreement.*
- iv) to allow the Government to continue the work so as to enable to finish the same within a stipulated timeframe;*
- v) to pass any other appropriate order(s) or direction(s) which the Hon'ble Court may deem fit and proper in the facts and circumstances of the Case."*

During the course of hearing, the prayers No. 1 & 2 are taken up for consideration of passing appropriate order as prays for by the learned counsel for the applicants/respondents and as agreed to by the learned counsel for the respondent/petitioner.

[10] On 19.04.2023, when the writ petition was taken up for admission, this Hon'ble Court granted interim order directing the applicants/respondents not to make joint measurement. The said interim order was extended from time to time and the State applicants/respondents are seeking to vacate the said interim order.

[11] The applicant/respondent Nos. 2 & 3 have filed a preliminary affidavit dated 25.04.2023 stating that the interim order is not called for in the writ petition and the applicant/respondent State may be allowed to complete the work and prayed for modification of the interim order dated 19.04.2023, with supporting documents annexed as Annexures -B/1 to B/43. Thereafter, Joint

Measurement Report was submitted and an affidavit in that regard was also filed on 27.09.2023. The applicant craves the leave of this Hon'ble Court to rely upon those affidavits, documents/annexures at the time of hearing of the present application.

[12] On 01.08.2023, the Hon'ble Court was pleased to hear the matter [WP(C)No. 358 of 2023] at length and after hearing the submission made by the parties, the Hon'ble Court was inclined to vacate the **interim order dated 19.04.2023** passed in the writ petition in the interest of justice thereby directing the applicants/respondents authorities to conduct the joint measurement as stated in **the impugned order dated 11.04.2023** and file a report before this Hon'ble Court before the next date of hearing.

Further, it is also stated that after delivering the order by this Hon'ble Court, learned counsel for the respondent/petitioner prayed that till the joint measurement is taken place, both the parties may be directed to maintain the status quo as on that day. In view of the prayer made, this Hon'ble Court, vide **another order dated 01.08.2023**, was pleased to order that *"till the joint measurement is taken place, both the parties are directed to maintain the status quo as on today"*.

[13] In the said order dated 01.08.2023, the Hon'ble Court was pleased to observe as follows:-

*".....In the factual scenario put forth by the respective parties, if joint measurement is conducted, no prejudice would be caused to the petitioner and if joint measurement is conducted, it will be helpful for the Court to know about the exact work executed at the ground level by the petitioner and based on the report, further steps can be taken in this matter. Moreover, the third respondent has every right to conduct joint measurement to assess the work executed by the contractor at the site. **The aforesaid observation of this Court is only in the interest of both parties and for the welfare of the public scheme and the public money involved for construction of Civil Secretariat.** Therefore, keeping the writ petition pending, the respondent authorities are directed to conduct joint measurement in order to assess the construction work and the other work done and executed by the petitioner at the site. For the purpose of conducting joint measurement, the interim order dated 19.04.2023 needs to be vacated enabling the respondent authorities to carry out of the joint measurement....."*

[14] The learned counsel for the applicants/respondents submitted that the Joint Measurement for the work "Construction of Capital Complex (Civil Secretariat Component) at Mantripukhri" was conducted as per the direction of this Hon'ble High Court's order dated 01.08.2023. Thereafter, the Joint Measurement Report, as furnished by the Department vide letter dated 27.09.2023, was submitted to this Hon'ble Court through the Registrar (Judl.) vide forwarding letter dated 27.09.2023 through the office of the Advocate General, Manipur. **It is also pertinent to mention herein that the petitioner refused to sign in some of the items in list of items in the Joint Measurement and the same was indicated while submitting the report before this Hon'ble Court.**

[15] **The learned counsel for the applicants/respondents also submitted that on 09.10.2023, the petitioner filed an affidavit with objection to the Joint Measurement Report dated**

27.09.2023. In the said objection affidavit, the respondent/petitioner has clearly mentioned that the representative of SACIL had refused to sign against some of the **items in the list of items in the Joint Measurement due to the factual dispute between writ petitioner and the State authorities.** On 09.10.2023, owing to the filing of objection affidavit and seeking time for filing counter affidavit in **MC(WP(C)) No. 140 of 2023** by the respondent/petitioner, the matter could not be heard and adjourned thereby extending the earlier interim order dated 01.08.2023 till the next date.

[16] The learned counsel for the applicants/respondents submitted that the matter clearly involves disputed question of facts and admitted by the writ petitioner in the objection affidavit dated 09.10.2023. The Hon'ble Supreme Court in catena of cases had held that disputed questions of facts fall outside the writ jurisdiction of Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court in "**Shubhas Jain – versus – Rajeshwari Shivam & Ors. (2021 SCC Online SC 562)**" held as follows:

"26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed question of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable."

Therefore, the disputed questions of facts cannot be decided by the Writ Court and as such the present writ petition may be dismissed in limine by this Hon'ble Court.

[17] The learned counsel for the applicants/respondents also submitted that the writ petition is also not maintainable as per the Arbitration Clause 25 of the Work Agreement (annexed as Annexure A/5 in the writ petition) which states as follows:

"Clause 25 – Settlement of Dispute & Arbitration –

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

- I. If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer or where there is no Chief Engineer, the Additional Director General (CE/ADG) who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/ADG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.*

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ADG/SDG or on expiry of aforesaid the time limits available to DRC/ADG/SDG, may give notice to the Chief Engineer, Manipur PWD, or if there be no Chief Engineer, the Additional Director General/Special Director General concerned or if there be no Additional Director General / Special Director General concerned of if there be no Additional Director General / Special Director General, the Director General, Manipur PWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/ADG/DG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-Charge to CE/ADG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of -

- a. A party fails to appoint the second Arbitrator, or*
- b. The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Chief Engineer, Manipur PWD shall appoint the second or Presiding Arbitrator as the case may be.*

II. Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 crore or less. Where claimed value is more than Rs. 20 crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-

enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitration and giving reference to the decision of ADG/SDG on the finding/recommendation of DRC.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering and further he shall have earlier worked at a level not lower than Chief Engineer/ equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to the arbitral tribunal shall be as approved by Chief Engineer, PWD, Manipur. This fee shall be shared equally by parties. The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue."

[18] The learned counsel for the applicants/respondents further submitted that since the matter is regarding the disputed question of facts and Contract Agreement with Arbitration Clause,

where the legal question does not arise, for the stated reason the Clause 25 of the Contract Agreement may be invoked. It is worth mentioning that since the matter is relating to the Contract Agreement and concerning disputed facts, the writ Court may not be **the appropriate forum and the parties may be referred to Arbitration or before Ld. Civil Court.** As such, the matter be referred to the DRC/ Arbitration invoking the provision of Clause 25 of the Contract Agreement. Moreover, in **para No. 45 of the order dated 01.08.2023, the Hon'ble Court observed as follows:**

"45. As could also be seen from the general conditions of the contract, particularly Clause 25 provides settlement of dispute and arbitration of the conditions of the contract agreement to settle any dispute or grievances, if any. In view of the factual questions involved in the writ petition and in the absence of detailed counter-affidavit filed by the respondents resisting the allegations set out in the writ petition, the merits of the termination of the agreement dated 08.06.2021 cannot be gone into at this stage."

[19] The learned counsel for the applicants/respondents also submitted that the work "Construction of Capital Project (Civil Secretariat Component) at Mantripukhri" is a highly prestigious project which is of great importance to the State and its people i.e., public utility. The present work has become a prestige issue for the State Government in front of Central leadership and the Government of Manipur has decided to complete the work on departmental basis. It is pertinent to mention herein that after the completion of the Project the same is awaited to be inaugurated by the Highest Official of the Central Government as it is actually the project of

National importance. As such, speedy completion of the project is the need of the hour in public interest. And the Government may be allowed to complete the project.

[20] The learned counsel for the applicants/respondents submitted that the delay in executing the work is not the result of the non-payment of bills to the petitioner and, in fact, up-to-date bill amounts have been settled to the petitioner. As far as the pending bills are concerned, the department checked those bills and found to be heavily exceeding than the actual work done and, therefore, the same was returned to the petitioner for correction.

[21] The learned counsel for the respondent/petitioner has submitted affidavit-in-opposition on behalf of the respondent/petitioner by denying almost all the submission and the prayers put forth in the miscellaneous application by the applicant/respondent and submitted that the contents of the paragraphs are matter of records.

1. Submitted that the present application is not maintainable as a writ petition can be maintained in a contractual matter despite existence of an arbitration clause as the *//s* involves a public law character and the alternative forum chosen by the parties would not be in-a-position to grant appropriate relief. The present action of the state in terminating the present agreement in question is arbitrary, unreasonable and violative of the constitutional rights of the petitioner. Therefore, the present writ petition is maintainable. Hence, this Hon'ble Court was

please to pass the interims orders in the present writ petition.

2. Further submitted that the representatives of the respondent-company had refused to sign against the list of items in the Joint measurements dated 27.09.2023 for the following reasons:

(i) The records of the measurements of the some of the said items were not provided to the representatives of SACIL by PWD.

(ii) The records of the measurements of the some of the said items were provided to the representatives of SACIL by PWD but without sufficient time to verify and cross-check the measurements.

(iii) The details of the work done regarding the said items were not measured by PWD.

3. Further submitted that the present action of the State in terminating the present agreement in question is arbitrary, unreasonable and violative of the Constitutional rights of the petitioner and this Hon'ble Court under writ jurisdiction is competent to decide the present dispute. It is settled law that the need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to the writ applicant. The case-laws cited by the applicants in the present paragraph are not applicable to the present case.

4. Further submitted that it is settled law that a writ petition can be maintained in a contractual matter despite existence of an arbitration clause in the following alternatives scenarios:

- (i) Where the *lis* involves a public law character or requires a judicial determination in rem;**
- (ii) The alternative forum chosen by the parties would not be in a position to grant appropriate relief;**
- (iii) A statutory contract is in question or the action of a state or its instrumentality is demonstrably arbitrary, unreasonable or violative of the fundamental rights of a party;**
- (iv) The matter does not relate only to the interpretation of a contract which is within the domain of an arbitrator.**

It is also submitted that the present action of the State in terminating the present agreement in question is arbitrary, unreasonable and violative of the constitutional rights of the petitioner and this Hon'ble Court under writ jurisdiction is competent to decide the present dispute. It is settled law that the need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to the writ applicant, therefore, the present writ petition is maintainable.

5. The respondent no. 1 craved leave of this Hon'ble Court to file an additional affidavit and documents to supplement the present affidavit-in-opposition, if required at a later stage.

[22] As requested by both the learned counsels, this Court allowed the request of both the learned counsels to file written submissions in support of their case and the same are reproduced herein below:

[23] **Written submissions submitted on behalf of the State applicants/respondents:**

"1. The State applicants humbly beg to submit that the initial work, "Construction of Capital Project (Civil Secretariat Component) at Mantripukhri, was awarded to M/S Simplex Projects Ltd. Kolkata. Due to heavy delay in completion, the work awarded to M/S Simplex Project Ltd. was determined on 2.11.2019. Thereafter, the remaining work was awarded to M/S Sri. Avantika Contractors (I) Ltd., vide Agreement No. EE/BD-I/AGRT/2021-22/01 dated 8.6.2021 (Annexure A/5 to the writ petition). The stipulated time period for completion of work was 12 (twelve) months (2.6.2021 to 1.6.2022). Again, this firm could not complete the work within time, inspite of repeated show cause notices for the delay in the execution of work, after giving reasonable opportunities and having no alternative, the Contract Agreement entered between the Executive Engineer, Building Division No. 1, PWD, Manipur and M/s Sri Avantika Contractors (I) Ltd. in respect of the work, "Construction of Capital Complex (Civil Secretariat Component) at Mantripukri" was determined vide letter No. EE/BD-I/Civil Sectt/2022-23/1069 dated 11.4.2023.

In the said letter dated 11.4.2023 for determination of Contract, it is clearly informed the petitioner to attend for joint measurement by stating that failing which the Joint Measurement will be conducted in absence of the petitioner and the result will be final and binding. Further, it is also stated to approach the appropriate authority as provided

under Clause No. 25 – Settlement of Dispute and arbitration of the Conditions of the Contract Agreement to settle any disputes or grievances, if any.

2. That it is most respectfully submitted that the above referred Writ Petition being WP(C) No. 358 of 2023 was filed praying inter-alia to quash/ set aside the letter No. EE/BD-I/Civil Sectt/2022-23/1069 dated 11.4.2023 by which the Contract Agreement No. EE/BD-I/AGRT/2021-22/01 dated 8.6.2021 was terminated on the basis of the pleadings made therein.

3. That it is humbly begs to submit that on 19.4.2023, this Hon'ble Court granted interim order directing the respondents not to make joint measurement (Annexure M/1 to the MC(WP(C)) No. 357 of 2023) for the works done by the petitioner. The said interim order was extended from time to time.

4. That the State Respondent highlighting all the facts, a preliminary Affidavit dated 25.4.2023 was filed, stating that the interim order is not called for in the writ petition and the respondent State may be allowed to complete the remaining work and prayed for modification of the interim order dated 19.4.2023, with supporting documents annexed as Annexures - B/1 to B/43 on behalf of the Respondents No. 2 & 3 to the Writ Petition.

5. That it is most respectfully begs to submit that on 1.8.2023, the Hon'ble Court after hearing the submission made by the parties, was pleased to vacate the interim order dated 19.4.2023 (Annexure M/1 to the MC(WP(C)) No. 357 of 2023) passed in the writ petition in the interest of justice thereby directing the respondent authorities to conduct the joint measurement as stated in the impugned Letter dated 11.4.2023 (Annexure A/22 to the writ petition) and to file a report before the Hon'ble Court, before the next date of hearing.

6. That it is also to state that after delivering the Order by this Hon'ble Court, learned counsel for the petitioner prayed that till the joint measurement is taken place, both the parties may be directed to maintain the status quo as on that day. In view of the prayer made, this Hon'ble Court vide another Order dated 1.8.2023 was pleased to order that *'till the joint measurement is taken place, both the parties are directed to maintain the status quo as on today'. (Annexures – M/2 & M/3 respectively to MC(WP(C)) No. 357 of 2023).*

7. That it is most respectfully begs to submit that in the above said Order dated 1.8.2023, the Hon'ble Court was pleased to observe as follows –

*"In the factual scenario put forth by the respective parties, if joint measurement is conducted, no prejudice would be caused to the petitioner and **if joint measurement is conducted, it will be helpful for the Court to know about the exact work executed at the ground level by the petitioner and based on the report, further steps can be taken in this matter.** Moreover, the third respondent has every right to conduct joint measurement to assess the work executed by the contractor at the site. The aforesaid observation of this Court is only in the interest of both parties and for the welfare of the public scheme and the public money involved for construction of Civil Secretariat. Therefore, keeping the writ petition pending, the respondent authorities are directed to conduct joint measurement in order to assess the construction work and the other work done and executed by the petitioner at the site. For the purpose of conducting joint measurement, the interim order dated 19.4.2023 needs to be vacated enabling the respondent authorities to carry out the joint measurement."*

8. That it is most respectfully begs to submit that as per the direction of this Hon'ble Court, the Joint Measurement for the work, "Construction of Capital Complex (Civil Secretariat Component) at Mantripukhri" was conducted as per the direction of this Hon'ble High Court's

order dated 1.8.2023. Thereafter, the Joint Measurement Report as furnished by the Department vide letter dated 27.9.2023 was submitted to this Hon'ble Court through the Registrar (Judl.) vide forwarding letter dated 27.9.2023 through the office of the Advocate General, Manipur. It is also pertinent to mention herein that the petitioner refused to sign in some of the items in list of items in the Joint Measurement and the same was indicated while submitting the report before this Hon'ble Court.

9. That the present Misc. Application being MC[WP(C)] No. 357 of 2023 Ref.: WP(C) No. 358 of 2023 was filed by the State Applicants/ State Respondents praying the following prayers :

- i) to vacate/ modify the interim Orders dated 1.8.2023 and dated 9.10.2023 and its subsequent extension orders passed in the instant writ petition being WP(C) No. 385 of 2023;
- ii) to dismiss the present writ petition as not maintainable due to the disputed question of facts involved in the present case;
- iii) to refer the case for Arbitration as provided in Clause 25 of the Contract Agreement;
- iv) to allow the Government to continue the Work so as to enable to finish the same within a stipulated timeframe; -AND-
- v) to pass any other appropriate order(s) or direction(s) which the Hon'ble Court may deem fit and proper in the facts and circumstances of the Case.

10. That it is most respectfully begs to submit that while hearing the present Misc. Application, the State Applicants pressed only the prayers made in prayer number (i) and (ii)

—

- i) to vacate/ modify the interim Orders dated 1.8.2023 and dated 9.10.2023 and its subsequent extension orders passed in the instant writ petition being WP(C) No. 385 of 2023;
- ii) to dismiss the present writ petition as not maintainable due to the disputed question of facts involved in the present case;

11. That it is most respectfully begs to state that the State Applicants argued that interim order dated 1.8.2023 and its subsequent orders are liable to be vacated/ modified and the writ petition deserves to be dismissed as the same is not maintainable on the following grounds:

- (a) That the interim Order dated 1.8.2023 and its subsequent orders are liable to be vacated in view of the public necessity involved in the project as the work "Construction of Capital Project (Civil Secretariat Component) at Mantripukhri" is a highly prestigious project which is of great importance to the State and its people i.e., public utility.
- (b) That there is question of disputed facts/ false submission of fact.
- (c) That there is breach of contract Agreement and the same may be allowed to deal in accordance with the Arbitration clause (Clause 25) as per the Contract Agreement entered between the Executive Engineer, Building Division No. 1, PWD, Manipur and M/s Sri Avantika Contractors (I) Ltd. in respect of the work, "Construction of Capital Complex (Civil Secretariat Component) at Mantripukhri".

12. That with regards the vacation of interim order dated 1.8.2023 and its subsequent extension orders, it is submitted that the work, "Construction of Capital Project (Civil Secretariat Component) at Mantripukhri" is a highly prestigious project which is of great importance to the State and its people i.e., public utility. The present work has become a prestige issue for the State Government in front of Central leadership and the Government of Manipur has decided to complete the work on departmental basis. It is pertinent to mention herein that after the completion of the Project the same is awaited to be inaugurated by the Highest Functioning of the Country as it is actually the project of National importance. As such, speedy completion of the project is the need of the hour in public interest. And the State Government may be allowed to complete the project departmentally. Further, it is submitted that the delay in executing the work is not the result of the non-payment of bills to the petitioner and, in fact, up-to-date bill amounts have been settled to the petitioner. As far as the pending bills are concerned, the department checked those bills and found to be heavily exceeding than the actual work done and, therefore, the same was returned to the petitioner for correction. It may be pertinent to mention herein that effective functioning of the State Government Departments is being curtailed as the infrastructure developed for the public i.e., the present work, could not be completed owing to the existence of interim orders. In this regard, in catena of cases, the Hon'ble Supreme Court has decided not to stop the work project of public importance.

The Hon'ble Supreme Court in ***NG Project Limited -versus- Vinod Kumar Jain and Others. (2022) 6 SCC 127*** Para Nos. 19, 20 & 21 held as follows:

"19. The Specific Relief Act, 1963 was amended by Central Act 18 of 2018 when clause (ha) was inserted in Section 41 of the said Act to say:

"41. (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject-matter of such project."

20. Such amendment was in pursuance of the report submitted on 20-6-2016 of the Expert Committee. The report is as under:

"The Expert Committee set on examining the Specific Relief Act, 1963 submits its Report to Union Law & Minister recommends modifications for ensuring ease of doing business.

The Expert Committee set on examining the Specific Relief Act, 1963 today submitted its Report to Union Law & Justice Minister Shri DV Sadananda Gowda here in New Delhi. In its report the committee has recommended modifications in the Specific Reliefs Act, 1963 for ensuring the ease of doing business.

In the context of tremendous developments which have taken place since 1963 and the present changed scenario involving contract based infrastructure developments, public private partnerships and other public projects, involving huge investments; and changes required in the present scheme of the Act and so that specific performance is granted as a general rule and grant of compensation or damages for non-performance remains as an exception, the committee decided –

- (i) To change the approach, from damages being the rule and specific performance being the rule and specific performance being the exception, to specific performance being the rule, and damages being the alternate remedy.*
- (ii) To provide guidelines for reducing the discretion granted to courts and tribunals while granting performance and injunctive reliefs.*
- (iii) To introduce provisions for rights of third parties (other than for government contracts).*
- (iv) To consider addressing unconscionable contracts, unfair contracts, reciprocity in contract, etc., and implied terms.*

The committee observed that there is a need to classify diverse public utility contracts as a distinct class recognising the inherent public interest/ importance to be addressed in the Act. Any public work must progress without interruption. This requires consideration whether a court's intervention in public works should be minimal. Smooth functioning of public works projects can be effectively managed through a monitoring system and regulatory mechanism. The role of courts in this exercise is to interfere to the minimum extent so that public works projects will not be impeded or stalled."

21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature *that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India.*

13. That it is most respectfully begs to state that in the Affidavit-in-Opposition dated 16th October, 2023 of the Respondent (M/s Avantika) filed in MC(WP(C)) No. 140 of 2023 Ref.: WP(C) No. 358 of 2023 it is stated that – **(i) at para No. 5 (page No. 3), it is stated as –**

"It is submitted that the respondent-company has executed 95% of the work and so far submitted bills of Rs. 100.78 Crores."

at para No. 14 (page No. 7), it is also stated as follows –

"It is submitted that the respondent-company has executed 95% of the work, whereas the Department had stated that the respondent-company has completed 53.73% of the work."

"As per the Joint-measurement report the percentage of work done by the respondent-company is 49%, whereas according to the respondent-company the percentage of work done is 97.61% after the Joint-measurement."

at para No. 16 (page No. 11), it is stated and admitted that –

*"It is submitted that as explained in the above-mentioned paragraph the percentage of 95% of the work being completed by the respondent-company is correct, therefore, the respondent-company has not made any false statement before this Hon'ble Court. Moreover, **the percentage of work done by the respondent-company is disputed and not yet determined by this Hon'ble Court.**"*

As such, the work done by the petitioner is not 95% but only 45.27% i.e., Rs. 88.91 cr. or otherwise only 53.73% as per the claims received by the Department. If the 95%, which is stated by the petitioner in the writ petition, is correct, the value of work will be of Rs. 184.78 cr. And such amount of bill is never received by the Department. It is further to state that the Bills are to be paid on measurable and completed works. Hence, the disputed question of facts is clearly involved herein.

(ii) With regards the false statement made by the petitioner, the law settled by the Hon'ble Supreme Court i.e., **(2022) 12 SCC 815** (K. Jayaram & Ors -vs- Bangalore Development Authority & Ors.) (para 13-14) is relied by the State Applicants. Relevant portion of the same are being reproduced hereunder –

❖ **(2022) 12 SCC 815** –Para 13 (False Statement)
(K. Jayaram & Ors -vs- Bangalore Development Authority & Ors.)

"13. In *K.D. Sharma v. SAIL* [*K.D. Sharma v. SAIL*, (2008) 12 SCC 481], it was held thus: (SCC pp. 492-93, paras 34-39)

*"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. **It is, therefore,***

of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners* [*R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] in the following words : (KB p. 514)

'... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.'

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. ***If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, 'We will not listen to your application because of what you have done.'*** The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commissioners* [*R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486: 86 LJKB 257 : 116 LT 136 (KB & CA)], Viscount Reading, C.J. observed : (KB pp. 495-96)

'... Where an ex parte application has been made to this Court for a rule nisi or other process, **if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.** This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion, a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.'

38. The above principles have been accepted in our legal system also. **As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him.** He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. **The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts.** If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commissioners [R. v. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". **Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty.** In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

14. That it is humbly submitted that the matter clearly involves disputed question of facts as admitted by the writ petitioner in the objection affidavit dated 9.10.2023. The Hon'ble Supreme Court in catena of cases has held that disputed questions of facts fall outside the writ jurisdiction of Court under Article 226 of the Constitution of India.

The State Applicants also relied on the following settled position of law decided by the Hon'ble Supreme Court of India –

❖ **(2021 SCC Online SC 562)** – para 25
(Disputed question of fact) (Shubhas Jain – versus -
Rajeshwari Shivam & Ors.)

"25. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable."

❖ **(2005) 12 SCC 725** –Paras 7, 8, 9, 10
(Disputed question of fact)(Orissa Agro Industries Corpn.
Ltd. & Ors. -vs- Bharati Industries & Ors.)

*"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.** (See *State of Bihar v. Jain Plastics & Chemicals Ltd.* [(2002) 1 SCC 216])*

*8. In a catena of cases this Court has held that **where the dispute revolves round questions of fact, the matter ought not to be entertained under Article 226 of the Constitution.** [See *State Bank of India v. State Bank of India Canteen Employees' Union* [(1998) 5 SCC 74 : 1998 SCC (L&S) 1270] and *Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) v. Sukamani Das* [(1999) 7 SCC 298].]*

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.** (See G.M., Kisan Sahkari Chini Mills Ltd. v. Satrugan Nishad [(2003) 8 SCC 639] and Rourkela Shramik Sangh v. Steel Authority of India Ltd. [(2003) 4 SCC 317 : 2003 SCC (L&S) 456]

10. In National Highways Authority of India v. Ganga Enterprises [(2003) 7 SCC 410] it was observed by this Court **that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter.** The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See Har Shankar v. Dy. Excise and Taxation Commr. [(1975) 1 SCC 737: AIR 1975 SC 1121] and Divisional Forest Officer v. Bishwanath Tea Co. Ltd. [(1981) 3 SCC 238 : AIR 1981 SC 1368])"

15. That it is most respectfully begs to submit that as disputed question of fact is clearly involved beyond any doubt, the writ is not maintainable and, in this regard the State Applicants relied upon the following settled position of law decided by the Hon'ble Supreme of Court of India –

❖ **(1996) 6 SCC 623**–Para 19 (Maintainability) (TK Lanzthika -vs- Seth Karsandas Jamnadas)

"19. As the third proviso to Section 11(3) disentitles a landlord from applying for eviction of the tenant before the expiry of the quarantine period, the petition filed by the landlord in this case has to be dismissed only on that ground. **Any observation made on this case in the proceedings based on such a non-maintainable petition must stand erased from judicial notice.** If the present landlord filed a new petition must stand erased from judicial notice. If the present landlord files a new petition for eviction under the Act, as the ban period is over, the same has to be considered and disposed of uninfluenced by any of the observations made by the High Court or the courts below thereto."

❖ (2023) 7 SCC 740 – Paras 23, 39
(Maintainability)(S. Narahari & Ors. -vs- SR Kumar & Ors.)

"23. We are of the considered opinion that only after the issue of maintainability is decided upon, can this Court enter into the merits of the case. The issue of maintainability of special leave petition is akin to a rite of passage, and only after it is deemed that special leave petition is maintainable, can an entry be taken into the merits of a dispute."

"39. Therefore, in light of the abovementioned observations, we are of the opinion that to put a quietus to such an issue, it is necessary for the same to be adjudicated and deliberated upon by a larger Bench of this Court. Further, since only after such a preliminary objection is decided, can the merits of the present case be entered into, the same is to be placed before an appropriate Bench after the question of law is decided by the larger Bench."

❖ (2002) 1 SCC 475 – Para 6
(Maintainability) (Gagandeep Pratishthan Pvt. Ltd. & Ors. -vs- Mechano & Anr.)

"6. In view of the peculiar facts of this case without going into the merits of the contentions raised by the counsel for the appellants, we think it is just and fair that we should not at this point of time interfere with the impugned order though the High Court could have avoided passing such orders in proceedings where the maintainability itself was being seriously questioned, be that as it may, we at this stage think it appropriate that the High Court should consider the question of condonation of delay and the objection of the appellants herein in regard to maintainability of the appeal first, before proceeding with the appeal any further. We also think it to be just and proper that any further interim orders if necessary in the appeal before the High Court in regard to the suit property should be made only after deciding the question of delay and maintainability of the appeal and the order already made should be confined to the appointment of a Receiver and filing of his report only, meaning thereby that the impugned order be confined to the appointment of Receiver for the purpose of filing his report as directed by the Court and nothing beyond that, at this stage."

❖ (2003) 7 SCC 410 – Para 6
(Maintainability) (National Highways Authority of India -vs-
Ganga Enterprises & Anr.)

*"6. The respondent then filed a writ petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz.: (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) **whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter.** The High Court instead considered Question (a) and then chose not to answer Question (b). In our view, the answer to Question (b) is clear. **It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India.** It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293], State of U.P. v. Bridge & Roof Co. (India) Ltd. [(1996) 6 SCC 22] and Bareilly Development Authority v. Ajai Pal Singh [(1989) 2 SCC 116]. This is settled law. The dispute in this case was regarding the terms of offer. **They were thus contractual disputes in respect of which a writ court was not the proper forum.** Mr Dave, however, relied upon the cases of Verigamto Naveen v. Govt. of A.P. [(2001) 8 SCC 344] and Harminder Singh Arora v. Union of India [(1986) 3 SCC 247]. **These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus, on the ground of maintainability the petition should have been dismissed.**"*

❖ (2006) 11 SCC 696 – Para 42
(Maintainability)(Union of India & Ors. -vs- Ranbir Singh
Rathaur & Ors.)

"42. On a bare reading of the High Court's order and the averments in the writ petitions, one thing is crystal clear that there was no definite allegation against any person who was responsible for the so-called manipulation. It is also not clear as to who were the parties in the writ petitions filed. In the grounds indicated in the writ petitions it was stated

that there is no bar or impediment on the High Court reviewing the petitioner's case as also connected cases to enquire into the validity of the acts done against the writ petitioner. Therefore, it was an accepted position that the writ petitioners wanted review of the High Court's order, which is clearly impermissible. No ground for seeking such review apparently was made out. ***In any event we feel that the High Court's approach is clearly erroneous. The present appellants in the counter-affidavit filed had raised a preliminary objection as regards the maintainability of the writ petitions and had requested the High Court to grant further opportunity if the necessity so arises to file a detailed counter-affidavit after the preliminary objections were decided. The High Court in fact in one of the orders clearly indicated that the preliminary objections were to be decided first. But strangely it did not do so. It reserved the judgment and delivered the final judgment after about three years. There is also dispute as to whether the relevant documents were produced. What baffles us is that in the High Court, records with original documents were shown to it and the Bench wanted the copies to be filed. In the impugned judgment the High Court proceeded on the basis as if only a few pages of the files were shown. If that was really the case, there was no necessity for the High Court to direct the present appellants to file copies. If after perusal of the documents the High Court felt that these were not sufficient the same would have been stated. But that does not appear to have been done. The High Court also had not discussed as to how the matters which stood concluded could be reopened in the manner done. No sufficient grounds have been even indicated as to why the High Court felt it necessary to do so. To say that though finality had been achieved, justice stood at a higher pedestal is not an answer to the basic question as to whether the High Court was competent to reopen the whole issue which had become concluded. The persons whom the High Court felt were responsible for alleged manipulation or persons behind false implication were not impleaded as parties. Newspaper reports are not to be considered as evidence. The authenticity of the newspaper reports was not***

established by the writ petitioners. Even otherwise, this could not have been done in a writ petition, as disputed questions of fact were apparently involved. The matters which the High Court found to have been established were really not so. The conclusions were based on untested materials, and the writ petitioners had not established them by evidence. Since the High Court has not dealt with the matter in the proper perspective we feel that it would be proper for the High Court to rehear the matter. The High Court shall first decide the preliminary objections raised by the present appellants about the non-maintainability of the writ petitions. Normally such a course is not to be adopted. But in view of the peculiar facts involved, it would be the appropriate course to be adopted in the present case. Therefore, we remit the matter to the High Court for fresh hearing. We make it clear that whatever we have observed should not be treated to be the conclusive findings on the subject-matter of controversy. The appeals are allowed without any order as to costs. Since the matter is pending since long, we request the High Court to dispose of the matter as early as practicable, preferably within four months from the date of receipt of the judgment. No costs."

16. That it is most respectfully begs to submit that in addition to the above disputed question of facts, there is a breach of trust and violation of the terms of the Contract Agreement and the same is to be settled as per Clause No. 25 of the Contract Agreement dated 8.6.2021 (Annexure A/5 to the writ petition) which states as follows:

"Clause 25 – Settlement of Disputes & Arbitration -

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and Instructions here-In-before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation,

termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

I. If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the chief Engineer or where there is no Chief Engineer, the Additional Director General (CE/ADG) who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/ADG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the Concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ADG/SDG or on expiry of aforesaid the time limits available to DRC/ADG/SDG, may give notice to the Chief Engineer, Manipur PWD, or if there be no Chief Engineer, the Additional Director General / Special Director General concerned or if there be no Additional Director General Special Director General concerned or if there be no Additional Director General / Special Director General, the Director General, Manipur PWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/ADG/DG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-Charge to CE/ADG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

—

- a. A party fails to appoint the second Arbitrator, or*
- b. The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Chief Engineer, Manipur PWD shall appoint the second or Presiding Arbitrator as the case may be.*

II. Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 crore or less. Where claimed value is more than Rs. 20 crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of ADG/SDG on the finding / recommendation of DRC.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering and further he shall have earlier worked at a level not lower than Chief Engineer/ equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast-track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision In the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to the arbitral tribunal shall be as approved by Chief Engineer, PWD, Manipur. This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue."

It is further humbly begged to submit that in this regard, the State Applicants relied upon the decision rendered by the Hon'ble Supreme Court in Union of India &Ors. -vs- Puna Hinda reported in **(2021) 10 SCC 690** – Para 24, which reads as follows –

"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.”*

17. That the State Applicants most respectfully begs to submit that the Hon'ble Supreme Court in catena of Cases has decided that the judgments passed by Courts without jurisdiction is nullify. The State Applicants relied upon the case of Harshad Chiman Lal Modi -versus- DLF Universal Ltd. & Anr reported in (2005) 7 SCC 791 Para No. 33. Relevant portion is being reproduced hereunder –

"33. In Kiran Singh v. Chaman Paswan [(1955) 1 SCR 117 : AIR 1954 SC 340] this Court declared : (SCR p. 121)

***"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity,** and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction ... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*

(emphasis supplied)

18. In the fact and circumstances, there is disputed question of fact involved in the present case and this Hon'ble Court has no jurisdiction to deal the same. On the other hand, the question of breach of Contract Agreement is also involved herein and the same has to be dealt under the Clause 25 provided in the Contract Agreement. And importantly, the work involved herein is of public importance and the interim order dated 1.8.2023 and its subsequent orders are liable to be vacated/ modified.

In conclusion, the interim Order dated 1.8.2023 and its subsequent orders are liable to be vacated/ modified and the writ petition deserves to be dismissed for the ends of justice."

[24] **Written submissions submitted on behalf of the respondent/petitioner in WP(C) No. 358 of 2023:**

"1. The present writ petition has been preferred on behalf of the Petitioner against the illegal termination of the work for Construction of Capital Complex (Civil Secretariat Component) at Mantripukhri, Imphal–Balance Work at Imphal"–[Agreement No.EE/BD-I/AGRT/2021-22/01dt. 08-06-2021], (in Short "**Civil Secretariat Balance Work**") *vide* letter dated 11.04.2023 issued by the Executive Engineer, Building Division No.1, PWD, Manipur ("**Respondent No. 3**"). The said Civil Secretariat Balance Work was executed by the Petitioner as per the said agreement. **It is imperative to submit here that there is no disputed question of facts under challenge or any such prayer in the captioned writ petition.**

2. **[The present written arguments are filed in addition to the oral arguments made on behalf of the Sri Avantika Contractors (I) Ltd ("Petitioner"), as per the liberty granted by this Hon'ble Court *vide* Order dated 29.01.2024, passed in the above-mentioned matter.]**
3. For the convenience of this Hon'ble Court, a chronological list of relevant dates and events as set out as under:

08.06.2021-The Agreement No. EE/BD-I/AGRT/2021-22/01
dt.08.06.2021- Civil Secretariat Balance Work
was executed between the petitioner and the
Respondent No.3. The accepted amount of
the work was Rs.167,40,96,700.38 (Rupees

One hundred sixty seven crore forty lakh ninety six thousand seven hundred and thirty-eight paisa only) and the stipulated time period for completion of work was 12 months (2.6.2021 to 1.6.2022)[**A/5 Pg. 53 to 62**].

24.05.2022 - Respondent No.3 *vide* Letter No. EE/BD-I/Civil Sectt/2021-22/196, dated 24.5.2022 granted **provisional time extension of the said work upto 30-09-2022** in accordance with the provisions of Clause 5 of MPWD General Conditions of Contract 2020 of the said agreement dated 8.6.2021.**(A/11, Pg.101)**.

The petitioner continued to execute the work within the extended period and beyond also, which was in the knowledge of the PWD and RA bills were also paid during the said period.

2022 - In the meantime, the delay in completing the Civil Secretariat Balance Work, was also a subject matter of a Public Interest Litigation i.e. PIL No. 34 of 2022 filed before the Hon'ble High Court of Manipur. In the said PIL, a prayer was made for directing the respondents therein i.e., the State and the petitioner herein to complete the balance/remaining work for construction of Capital Complex (Civil Secretariat Component) at Mantripukhri, Imphal, so that the existing Manipur Secretariat may be shifted to the new building and there is no traffic congestion in front of the old existing Manipur Secretariat at Babupara, Imphal.

4.4.2023 - After hearing the parties, the Hon'ble Division Bench of the High Court of Manipur by a judgment and order dated 04.04.2023 disposed off the said PIL No. 34 of 2022 with the following directions given below:

"....."

25. Considering the facts and circumstances of the case and the larger public interest involved, the PIL No.34 of 2022 is disposed of with the following directions:

(i) The respondent State is directed to decongest the traffic on the National Highway in front of the Old Manipur Secretariat by making arrangements for proper park of vehicles on both sides. Further, the respondent State is directed to strictly enforce the traffic rules to ensure illegal parked vehicles are booked.

(ii) The respondent State and the fourth respondent are directed to comply with their contractual obligations qua the completion of construction of Civil Secretariat work.

(iii) The respondent State is directed to pay the Outstanding dues as per the RA Bills raised by the respondent No. 4 and also approve the rates of deviations and extra items regarding the Civil Secretariat work at earliest.

(iv) The respondent State and the fourth respondent are directed to co-operate and work in concert with each other to ensure that the Civil Secretariat work is to be completed within a period of three months from the date of receipt of a copy of this order.

(v) There will be no order as to costs.

....."

[A/21, Pg.205-220]

11.04.2023 - **To the shock and surprise of the petitioner, the Executive Engineer, PWD issued Letter No. EE/BD-I/Civil Sectt/2022-23/169 dated 11.04.2023, whereby the Final action under Clause 3 of the aforesaid agreement was**

taken by terminating the said Agreement dt. 08.06.2021[A/22, Pg. 221-224].

12.04.2023 - The petitioner gave a reply letter dated 12.04.2023 to the said letter dated 11.04.2023 wherein *inter-alia* it was stated that the department had not fulfilled its fundamental obligations and therefore, had committed fundamental breach of the Agreement. Further, it was stated that a conjoint interpretation of all the above admitted reasons the starting of work was hampered due to several delays, defaults and breach of contract committed by the department and thus the provisions under Clause- 3 of Clauses of Contract cannot be invoked and accordingly prayed for withdrawal of termination letter dated 11.04.2023.[A/23, Pg. 225-227].

18.04.2023 - The Petitioner herein filed the captioned writ petition before this Hon'ble Court as there was no response from the Respondents regarding the reply-letter dated 12.04.2023, praying *inter-alia* for quashing the termination order dated 11.04.2023 and to allow resumption of Civil Secretariat Balance work. **[Prayers at pages 18-20]**

12.06.2023 - The Respondent herein preferred a Review Petition bearing Review Petition No. 11 of 2023 before the Division Bench against the final judgment and order dated 04.04.2023, passed in PIL No. 34 of 2023. This Hon'ble Court in its order dated 12.06.2023 observed that "*The petitioners has filed this review petition with a grievance only in para 25(iii) of the order dated 04.04.2023 passed in PIL No. 34 of 2022.*"

01.08.2023 - This Hon'ble Court *vide* order dated 01.08.2023, directed the Respondent to conduct a joint measurement and to submit a report. **[M/2, Pg 16 -48]**

01.08.2023 - This Hon'ble Court *vide* order dated 01.08.2023 directed the parties to maintain the status quo till the joint measurement report. **[M/3, Pg.49].**

However, the status quo order was extended from time to time in the interest of justice.

07.11.2023 - The Respondent preferred an application bearing **MC (WP(C)) No. 357 of 2023**, praying *inter-alia* vacation of the status quo order passed by this Hon'ble Court *vide* order dated 01.08.2023 and its subsequent extensions orders.

22.11.2023 - The Petitioner herein preferred a contempt petition bearing **Contempt Petition No. 120 of 2023** against the respondents herein and this Hon'ble Court *vide* order dated 22.11.2023 was pleased to issue notice in the above said contempt petition. Further, the same is pending for adjudication.

11.01.2024 - After notice was issued in the contempt petition, the respondent preferred an application bearing **MC (Rev. Pet.) No. 01 of 2024**, praying for the modification of the order dated 12.06.2023 passed in the Review Petition and allowing the Respondent to press all the prayers as prayed.

17.01.2024 - This Hon'ble Court *vide* order issued notice in the MC (Rev. Pet.) No. 01 of 2024.

4. That, **this Hon'ble High Court after hearing the Parties, had at this juncture had confined itself in adjudicating the following 2 (two) questions which are set out below:**

- I. Whether the present writ petition is maintainable or not due to the disputed question of facts involved in the present case?
- II. Whether the interim orders dated 01.08.2023, 09.10.2023 and subsequent extension orders passed in the instant writ petition i.e., W.P.(C) No. 385 of 2023 ought to be vacated/modified or not?
- III. **Whether the present writ petition is maintainable or not due to the disputed question of facts involved in the present case?**

5. The present writ petition does not challenge any disputed questions of facts nor does it involve any such disputes. The petitioner solely challenges the legality and validity of the termination letter dated 11.04.2024, through which the **respondent terminated the agreement dated 08.06.2021. The said termination letter is also violative of the direction in the judgment and order dated 04.04.2023 passed by the Hon'ble Division Bench of this Court in Para 25(iv).**

6. The termination of the agreement dated 08.06.2021 is alleged to be driven by malafide intentions, infringing upon the rights of the petitioner guaranteed under Article 14, 19(1)(g), and 21 of the Constitution of India. Despite the obligation to act with fairness, reasonableness, and in accordance with the law, the respondent authorities acted capriciously, thereby causing prejudice to the petitioner's rights.

7. **Additionally, the present writ petition incorporates a public law element in public law field that encompasses the interest of the public at large. It is a well-established legal principle that when an individual is aggrieved by the violation of fundamental rights and the cardinal principles of natural justice committed by a statutory authority, the remedy in the form of a writ under Article 226 of the Constitution of India cannot be denied. Reliance is placed on *Cube Construction Engineers v. State of Gujarat &Ors.*, *SCA No. 11486 of 2021*, whereby on relying on the *ABL International Ltd. v. Export Credit Guarantee Corporation on India*, (2004) 3 SCC 553, held that it is the obligation of the High Court under Article 226, to enforce the statutory duty of the state. The Hon'ble Supreme Court vide order dated 31-7-2023 in SLP (C) Diary No. 24511/2023 was please to dismiss the SLP filed against the said judgment.**

8. That, having an arbitration clause in the agreement, does not bar the petitioner from invocation of the writ jurisdiction. In the case of *Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd &Ors.*, (2003) 2 SCC 107, the Hon'ble Supreme Court emphasized that the High Court can entertain a writ petition despite the availability of an alternate remedy if certain conditions are met, including: i) enforcement of fundamental rights; ii) failure of principles of natural justice; iii) the impugned order being wholly without jurisdiction; or iv) challenging the vires of the act. That the said judgment was also upheld by the Hon'ble Supreme Court in the case of *Union of India &Ors. v. Tania Constructions*, (2011) 5 SCC 697, *U.P. Power Transmission Corporation Ltd. v. CG Power and Industrial Solutions Ltd.*, (2021) 6 SCC 15, *Unitech Limited &Ors. v. Telangana State Industrial Infrastructure Corporation*, (2021) 16 SCC 35, and *M.P. Power Management Company Ltd. v. Sky Power Southeast Solar India Private Ltd. &Ors.*, (2023) 2 SCC 703.

9. In the present case, the action taken by the Respondent Department suffers from manifest, arbitrariness and violates the cardinal principals of natural justice. That the Petitioner herein is seeking the enforcement of rights under Article 14, 19(1)(g), and 21, citing a violation of the principles of natural justice.

10. That relief sought by the Petitioner through the instant writ petition falls outside the scope and jurisdiction of arbitration. Consequently, the alternative forum would not be capable of providing the appropriate relief, specifically the invocation of the writ of certiorari and mandamus against the respondent State. Reliance is placed on the Hon'ble Supreme Court judgment titled as *Sanajana M. Wig v. Hindustan Petro Corporation Ltd. (2005) 8 SCC 242*.

11. It is respectfully submitted that the writ petitioner had relied upon the various judgments of the Hon'ble Supreme Court of India, where it was held that a writ petition can be maintained in a contractual manner in the following alternative scenarios, despite existence of an arbitration clauses:

- a) The */is* involves a public law character or requires a judicial determination in rem;
- b) The alternate forum chosen by the parties would not be in a position to grant appropriate relief;
- c) A statutory contract is in question or the action of a State or its instrumentality is demonstrably arbitrary, unreasonable or violative of the fundamental rights of a party;

- d) The matter does not relate only to the interpretation of a contract, which is within the domain of an arbitrator.

12. Hence, in light of the aforesaid submission, the present petition is maintainable under Article 226 of the Indian Constitution whereby, petitioner is seeking an enforcement of a fundamental right and the */is* involves public law character.

I. **Whether the interim orders dated 01.08.2023, 09.10.2023 and subsequent extension orders passed in the instant writ petition i.e., W.P.(C) No. 385 of 2023 ought to be vacated/modified or not?**

II. It is respectfully submitted that interim order in the present matters was passed based on the settled principles taking into account the three basic grounds i.e., prima facie case, balance of convenience and irreparable loss in the particular facts and circumstance of the case.

III. In the instant case, firstly prima facie case favors the petitioner, given the substantial completion of a significant portion of the work. Moreover, this Hon'ble Court, through a judgment and final order dated 04.04.2023, disposed of PIL No. 34 of 2022 after hearing both parties and considering the specific facts of the case. **In this order, the Hon'ble Court directed the respondent State and the petitioner herein to complete the work within a period of 3 (three) months. Despite these explicit directions, the Department arbitrarily and unlawfully terminated the work on 11.04.2023 within a week.** The present writ is filed to enforce a fundamental right, and considering the public law character of the

dispute, it was admitted as a prima facie case was established from the outset.

- IV. Secondly, the balance of convenience distinctly favors the petitioner, considering the substantial time and financial resources already invested in executing the work, which is now approaching completion. The arbitrary and illegal termination of the Civil Secretariat Balance work not only poses significant financial loss to the petitioner but also further delays in the project's completion, leading to additional losses to the public exchequer. Moreover, it is emphasized that if the interim order is vacated, the present matter would become infructuous. Therefore, the balance of convenience leans in favor of the Petitioner.
- V. Thirdly, petitioner is poised to suffer irreparable loss due to the arbitrary and illegal termination, evident in the idleness of its machinery and materials at the work site. This idle period has caused further delays in the ongoing works and, additionally, impacts other projects of the petitioner. The potential irreparable loss, which cannot be fully compensated in monetary terms, necessitated the granting of the interim order. Consequently, this Hon'ble Court, recognizing the urgency and potential harm to the petitioner, passed an interim order dated 01.08.2023 in favor of the petitioner. This interim relief not only addresses the immediate concerns but also contributes to securing the final relief sought by the petitioner in the writ petition.

VI. Therefore, the three cardinal principles i.e., prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case for granting the interim relief, lies in the favor of the Petitioner.

VII. **That the Hon'ble Supreme Court of India in the case of *Zenit Mataplast (P) Ltd vs State of Maharashtra, (2009)10 SCC 388 and Benedict Denis Kinny v. Tulip Brian Miranda & Ors., (2021) 12 SCC 780*, held that the interim relief is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. Therefore, the object of granting interim relief is, to protect the petitioner against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action.**

VIII. **Furthermore, it is noteworthy to mention here that the order dated 01.08.2023, instructing both the petitioner and Respondent No. 3 to uphold the status quo, was issued in public interest. Additionally, failure to grant the status quo by this Hon'ble Court would allow the Respondent department to establish third-party rights, leading to substantial delays in the completion of the said project.**

IX. Furthermore, the judgment and final order dated 04.04.2023 passed by the Division Bench of this Hon'ble Court has not been challenged by the respondent before the Hon'ble Supreme Court and thereby it has attained finality. Hence, the Single Bench of this Hon'ble should

maintain the judicial discipline and cannot bypass the judgment and final order dated 04.04.2023, passed by the larger bench. Reliance is placed on *Official Liquidator v. Dayanand*, (2008) 10 SCC 1, passed by the Hon'ble Supreme Court of India.

- X. That recently the Hon'ble Supreme Court in the case of *N.G. Projects Ltd. v. Vinod Kumar Jain&Ors.*, (2022) 6 SCC 127 ("**NG Projects**"), while adjudicating the similar issue, set aside the termination by the State and directed the state to allow the contractor to resume and complete the work by excluding the period spent in the stay of execution of the contract. Relevant excerpt of the judgment is reproduced herein below:

"25. In view thereof, we find that the action of the respondent in setting aside the letter of acceptance granted to the appellant suffers from manifest illegality and cannot be sustained. Consequently, the appeal is disposed of with a direction to the respondent State to allow the appellant to resume and complete the work by excluding the period spent in the stay of execution of the contract."

- XI. Therefore, the relief of status quo *vide* order dated 01.08.2023, was granted by this Hon'ble Court after relying on the above said three cardinal principles, which lies in favour of the petitioner herein. Therefore, the interim orders dated 01.08.2023, 09.10.2023 and subsequent extension orders passed in the instant writ petition i.e., W.P.(C) No. 385 of 2023, cannot be vacated or modified.

Conclusions/Relief: In the light of the above submissions, it is respectfully submitted that the instant writ petition is maintainable under Article 226 of the Constitution of India and further petitioner has satisfied the three cardinal principles, upon which this Hon'ble Court has

granted the interim relief. Therefore, miscellaneous application bearing MC(W.P.(C)) No.357 of 2023, may be dismissed and the instant writ petition bearing W.P.(C) No. 358 of 2023, may be heard on merits for final disposal.

Furthermore, it is essential to note here that, three cardinal principles strongly support the petitioner's case and as per the directions passed in *NG Project Supra*, the termination letter dated 11.04.2023 should be quashed. Additionally, the Respondent must be directed to allow the Petitioner to resume work and complete the project in the broader interest of the public and without infringing upon the Petitioner's fundamental rights".

Learned counsel for the respondent/petitioner relied upon the following Hon'ble Supreme Court judgments in support of his case;

- ❖ **SCA No. 11486 of 2021 (Cube construction Engineers Vs. State of Gujarat &Ors.)**
SLP (C) Diary No. 24511 of 2023 (The Hon'ble Supreme Court in State of Gujarat vs Cube Construction Engineering Ltd. &Ors., SLP (C) Diary NO. 24511 of 2023, Vide order dated 31.07.2023 dismiss SLP.)
- ❖ **(2003) 2 SCC 107 – (HarbanslalSahnia and AnrVs. Indian Oil Corp. Ltd. &Ors).**

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition

seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

❖ **(2011) 5 SCC 697 – (Union of India & Ors. Vs Tania constructions).**

"33. Apart from the above, even on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution."

❖ **(2021) 6 SCC 15 – U.P. Power Transmission Corpn. Ltd Vs CG Power and Industrial Solutions Ltd.)**

"66. Even though there is an arbitration clause, the petitioner herein has not opposed the writ petition on the ground of existence of an arbitration clause. There is no whisper of any arbitration agreement in the counter-affidavit filed by UPPTCL to the writ petition in the High Court. In any case, the existence of an arbitration clause does not debar the court from entertaining a writ petition."

❖ **(2021) 16 SCC 35 – (Unitech Limited & Ors. Vs Telangana State Industrial Infrastructure Corporation)**

"38. Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing, the learned Senior Counsel appearing on behalf of the State of Telangana and ISIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. The learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out of a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.

39. A two-Judge Bench of this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. 14 [ABL International] analysed a long line of precedent of this Court is to conclude that writs under Article 226 are maintainable for asserting contractual rights against the State, or its instrumentalities, as defined under Article 12 of the Indian Constitution.

39.1. Speaking through N. Santosh Hegde, J. the Court held: (ABL International case, SCC p. 572, para 27)

"27.... the 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 fact 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."*

This exposition has been followed by this Court, and has been adopted by the three-Judge Bench decisions of this Court in State of U.P. v. Sudhir Kumar Singh and Popatrao Vyankatrao Patil v. State of Maharashtra.

39.2. *The decision in ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.*

39.3. *Article 23.1 of the development agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a State instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226,*

39.4. *If the State instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of Article 226 of the Constitution would lie. This principle was recognised in ABL International¹⁴: (ABL International case, SCC p. 572, para 28)*

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

39.5. *Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of State power or a misuse of authority.*

39.6. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does (sic not) oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

39.7. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh High Court in this case, when the foundational representation of the contract has failed. TSIIC, a State instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal.

40. In the present case, the basic postulate underlying the contract between the parties was the availability of the land which comprised the project site. The LoA dated 28-11-2007 stated that the allotment of land was subject to the outcome of the pending appeal before the High Court of Andhra Pradesh. The dispute over the title of the Government of Andhra Pradesh was the subject of the pending litigation. At the same time, the LoA mandated that Unitech must pay the amount stipulated including the purchase price of Rs. 145 crores for the land as well as the project development expenses. A failure to do so would constitute a significant event of default resulting in a forfeiture of the earnest money deposit. Acting on the LoA, Unitech did in fact comply with its obligation to pay, having paid a total amount of Rs. 165 crores towards the purchase price, besides the earnest money deposit and project development expenses. The development agreement which was executed between APIIC and Unitech contains specific representations to the effect that APIIC was authorised to transfer and deliver the project site admeasuring 350 acres on an outright sale basis. Under the development agreement, APIIC was to sell and transfer the land absolutely together with its right, title and interest, free from all encumbrances by executing a sale agreement. The terms of the agreement were to prevail in the event of any conflict with any other document which formed a part of the

bidding process. The terms of the agreement were placed on the pedestal of the highest priority for interpretation, as compared to other documents, including the LoA. Under the terms of the development agreement, APIIC was obligated to sell and transfer the land together with its right, title and interest free from all encumbrances "forthwith upon payment of the last instalment of the total purchase price by the developer". That Unitech paid the total purchase price is not in dispute. The obligation assumed by APIIC to hand over possession together with title upon the payment of the last instalment of the purchase price unequivocally emerges from Article 3.1 and Article 4.1 of the development agreement. The fulfilment of the terms of the agreement was postulated on the availability of the land.

❖ **(2023) 2 SCC 703 –M.P. Power Management Company Ltd Vs. Sky Power Southeast Solar India Private Ltd. &Ors)**

"82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal, may not continue to hold good, in the light of what has been laid down in ABL and as followed in the recent judgment in Sudhir Kumar Singh.

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India.

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition.

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL1Q explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd., by its observations in SCC para 14 in ABL].

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

82.10. The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy

provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL, if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL. It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

*82.12. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard *Shrilekha Vidyarthi v. State of U.P.*). However, it must be made clear that every case involving breach of contract by the State,*

cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

82.13. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.

82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See Sudhir Kumar Singh).

88. Here we must understand the words "first milestone" as fulfillment of the conditions subsequent. In regard to fulfillment of said milestone for which there was a delay of 16 days in the case of Renew Clean Energy, there was a delay of 54 days in the case of the first respondent. It is further noticed by the High Court that there was an order passed in favour of Renew Clean Energy setting aside the termination of the contract in the said petitioner's case as confirmed by this Court. Next the High Court went on to record that there is a dispute as to whether the respondent had commissioned the power project in the present case. We notice that an attempt was made by the appellant to justify the termination on the basis that the respondent had not commissioned the power project within the time fixed. The High Court proceeds to notice that the aspect of commissioning the project was not the basis for terminating the contract. Relying on Mohinder Singh Gill, the appellants were not permitted to supplement the reasons for termination. Finally, the High Court has proceeded to find

that since the similar reason for termination of the agreement in the communication dated 11-8-2017 was not found justified in Renew Clean Energy, the impugned communication dated 11-8-2017 was set aside. It is thereafter that the liberty was given to the appellants to pass fresh orders in terms of the PPA in accordance with law."

❖ **(2005) 8 SCC 242 – Sanajana M. Wig Vs. Hindustan Petro Corpn. Ltd.)**

"13. However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.

18. It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefore, the writ petition may be held to be maintainable; but indisputably therefore such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service and E. Venkatakrishna that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent...."

❖ **(2009) 10 SCC 388 – (Zenit Mataplast (P) Ltd. Vs. State of Maharashtra)**

"27. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law (vide S.G. Jaisinghani v. Union of India, AIR p. 1434, para 14 and Haji T.M. Hassan Rawther v. Kerala Financial Corpn.).

30. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial (vide *Anand Prasad Agarwalla v. Tarkeshwar Prasad, and State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha*).

31. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. There may be a situation wherein the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide *M. Gurudas v. Rasaranjan and Shridevi v. Muralidhar*). Grant of temporary injunction is governed by three basic principles i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction [vide *S.M. Dyechem Ltd. v. Cadbury (India) Ltd. and Anand Prasad Agarwalla*, SCC p. 570, para 6]."

❖ **(2021) 12 SCC 780 – Benedict Denis Kinny Vs. Tulip Brian Miranda &Ors.)**

"36. The Delhi High Court judgment's conclusion in para 33(d) was set aside. The Delhi High Court in para 33(d), which judgment was impugned before this Court had laid down: (*Anur Kumar Jain case*, SCC OnLine Del)

"33. In view of our aforesaid discussion, we proceed to answer the reference on the following terms:

(d) Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act."

37. Nariman, J., ultimately after referring the judgment of L. Chandra Kumar has set aside the conclusion of the Delhi High Court in para 33(d). The above judgment, thus, laid down that despite restraint in Section 19(3)(c) of the Prevention of Corruption Act, the jurisdiction of the High Court to issue an interim order is not precluded. This Court in the above case has dealt with a situation when a statutory provision i.e. Section 19(3) (c) of the Prevention of Corruption Act creates a specific bar in passing a stay order. When despite the aforesaid statutory bar, the High Court was held to have jurisdiction to pass an interim order, in the present case, we are concerned in a statutory scheme where there is no express or implied bar in passing an interim order by the High Court.

38. As per Section 5-B, a candidate belonging to reserved category, who has made an application to the Scrutiny Committee for issuance of validity certificate prior to date of filing of nomination is obliged to submit the certificate within six months from the date of election (now substituted by twelve months), failing which his election shall be deemed to have been terminated retrospectively. The second proviso to Section 5-B creates a deeming fiction, which operates when a person failed to produce the validity certificate within a period of six months/twelve months from the date of his election. The present is a case where before expiry of period of six months from the date of election i.e. 23-2-2017, the Caste Scrutiny Committee has rejected the claim of the respondent and a writ petition was filed by the respondent before expiry of period of six months and the High Court also granted an interim order on 18-8- 2017 i.e. within a period of six months, after expiry of which the deeming fiction was to come into existence. The interim order was passed by the High Court before a deeming fiction of termination of election retrospectively came into operation. The consequence of non-filing of validity certificate within a period of six months was postponed, rather interdicted, by the interim order of the High Court. The jurisdiction of the High Court to pass the above interim order dated 18-8-2017 is questioned by the appellants. Caste Scrutiny Committee, which is a statutory authority constituted under the State enactment to verify the caste claimed by citizens, in event, illegally rejects the claim of citizen, does the citizen have no right to seek judicial remedy? Can the illegal rejection of caste claim of a citizen is a fait accompli after expiry of period of six months? When a citizen has right to judicial review against any decision of statutory authority, the

High Court in exercise of judicial review had every jurisdiction to maintain the status quo so as to by lapse of time, the petition may not become infructuous. The interim order can always be passed by a High Court in exercise of writ jurisdiction to maintain the status quo so that at the time of final decision of the writ petition, the relief may not become infructuous.

39. We are conscious of the fact that the High Court has to exercise jurisdiction under Article 226 with due regard to the legislative intent manifested by provisions of enactment. A nine-Judge Constitution Bench in Mafatlal Industries Ltd. v. Union of India 16 had laid down such proposition in para 108 in the following words: (SCC p. 635)

"108.... (x)... So far as the jurisdiction of the High Court's under Article 226 of the Constitution or of this Court under Article 32 - is concerned, it remains unaffected by the provisions of the Act. Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of the Act. The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them."

❖ **(2008) 10 SCC 1 – (Official Liquidator Vs Dayanand)**

"78. There have been several instances of different Benches of the High Court not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. this Court observed:

"19.....If one this is more necessary in law than any other thing, it is the quality of certainly. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another Singly Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court"

....

83. In Pradip Chandra Parija v. Pramod Chandra Patnaik the Constitution Bench noted that the two learned Judges denuded the correctness of an earlier Constitution Bench judgment in Bharat Petroleum Corpn. Ltd. V. Mumbai Shramik Sangha and reiterated the same despite the fact that the second Constitution Bench refused to reconsider the earlier verdict and observed:

"3. We may point out, at the outset, that in Bharat Petroleum Corpn. Ltd. V. Mumbai Shramik Sangha a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench bids a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.

- 4. The learned Attorney General submitted that a Constitution Bench judgment of this Court was binding on smaller Bench and a judgment of three learned Judges was binding on Benches of two learned Judges – a proposition that learned counsel for the appellants did not dispute. The learned Attorney General drew our attention to the judgment of a Constitution Bench in Sub-committee of Judicial Accountability v. Union of*

India where it has been said that 'no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench-. The learned Attorney General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in NityanandaKar was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of NityanandaKar, could have referred the case to a Bench of five learned judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned judges also comes to the conclusion that the earlier judgment of a Bench of three learned judges is incorrect, reference to a Bench of five learned Judges is justified."

86. In Central Board of Dawoodi Bohra Community v. State of Maharashtra the Constitution Bench interpreted Article 141, referred to various earlier judgments including Bharat Petroleum Corpn. Ltd. V. Mumbai Shramik Sangha and Pradip Chandra Parija v. Pramod Chandra Patnaik and held that the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status- both would be immediate casualty (Central Board of Dawoodi Bohra Community Case, SCC p.682, paras 12 & 10)."

[25] On perusal of the case dossier, it is seen and evident that this Court passed series of interim as well as vacation orders. And orders of the same are extracted herein below:

Operative portion of Interim order dated 19.04.2023 (1st Interim order)–

- "1. Heard Mr. Tayenjam Momo Singh, learned counsel for the petitioner and Mr. Lenin Hijam, learned Advocate General who takes notice for the respondents.*
- 2. Mr. Lenin Hijam, learned Advocate General seeks time for filing counter affidavit.*
- 3. Mr. Tayenjam Momo Singh, learned counsel for the petitioner represented that impugned order 11.04.2023 has been passed by the Respondent No. 3 thereby terminating the agreement of the petitioner dated 08.06.2021 and therefore, the petitioners would be suffered a great loss by the impugned order.*
- 4. Mr. Tayenjam Momo Singh also represented that as per the impugned order dated 11.04.2023 the Respondents are directed for joint measurement of the constructed building. Therefore, he prayed this Court to grant an interim order.*
- 5. Mr. Lenin Hijam, learned Advocate General is strongly opposing for granting any interim order and seeks time for filing counter and documents.*
- 6. Therefore, post the matter on 25.04.2023 in the motion list. Till such time, the respondents are directed not to make joint measurement.*
- 7. Interim order for stay of the impugned order will be considered on the next date of hearing."*

[26] The vacation of the above interim order is extracted herein below:

Operative portion of order dated 01.08.2023 (vacation of interim order)–

"44. The Division Bench of this Court directed the State and the petitioner to comply with their contractual obligations qua the completion of the construction of Civil Secretariat Work. According to the respondents, the petitioner has violated the

terms and conditions of the agreement and therefore the third respondent has rightly terminated the agreement dated 08.06.2021.

45. As could also be seen from the general conditions of the contract, particularly Clause 25 provides settlement of dispute and arbitration of the conditions of the contract agreement to settle any dispute or grievances, if any. In view of the factual questions involved in the writ petition and in the absence of detailed counter-affidavit filed by the respondents resisting the allegations set out in the writ petition, the merits of the termination of the agreement dated 08.06.2021 cannot be gone into at this stage.

*46. As stated supra, the third respondent decided to conduct a joint measurement of the work done by the petitioner. In the factual scenario put forth by the respective parties, if joint measurement is conducted, no prejudice would be caused to the petitioner and if joint measured is conducted, it will be helpful for the Court to know about the exact work executed at the ground level by the petitioner and based on the report, further steps can be taken in this matter. Moreover, the third respondent has every right to conduct joint measurement to assess the work executed by the contractor at the site. The aforesaid observation of this Court is only in the interest of both parties and for the welfare of the public scheme and the public money involved for construction of Civil Secretariat. Therefore, keeping the writ petition pending, the respondent authorities are directed to conduct joint measurement in order to assess the construction work and the other work done and executed by the petitioner at the site. For the purpose of conducting joint measurement, the interim order dated 19.4.2023 needs to be vacated enabling the respondent authorities to carry out the joint measurement. Therefore, in the interest of justice and without prejudice to the rights and contentions of the respective parties in the main writ petition, this Court is inclined to vacate the interim order dated **19.4.2023 passed in the writ petition.***

47. For the reasons stated supra, the interim order dated 19.4.203 granted by this Court in the writ petition stands vacated. The respondent authorities are directed to conduct the joint measurement as stated in the impugned order dated 11.04.2023 and file a report before this Court before the date of hearing on 04.09.2023.

48. It is made clear that the observation made by this Court in this order shall be confined only for the purpose of considering the interim order and it shall not be taken as final opinion of this Court."

[27] This Court on the same day after vacation of the previous injunction order passed another interim order and the same is extracted herein below:

**Operative portion of order dated 01.08.2023
(2nd interim order)**

"3. After delivering the order by this Court, Mr. T. Momo, learned counsel for the petitioner represented that till the joint measurement is taken place, both the parties may be directed to maintain the status quo as on today.

4. Therefore, till the joint measurement is taken place, both the parties are directed to maintain the status quo as on today."

[28] As aggrieved, the State applicant filed the present miscellaneous application for vacation/modification of the above referred interim orders.

As admitted by both parties, that the present subject matter i.e. the Construction of Capital Complex (Civil Secretariat Component) at Mantripukhri, the parties executed a contract agreement and the relevant portion of which both the parties are **relying upon** and the same is extracted herein below:

**Clause 3 and clause 25 of contract agreement
(08.06.2021):**

"Clause 3 – When Contract can be Determined – Subject to other provisions contained in this clause, the Engineer-in- Charge may, without prejudice to any other rights or remedy against the contractor in respect of any delay, not following safety norms, inferior workmanship, any claims for damages and/or any other provisions of this contract or otherwise, and whether the date of completion has or has not elapsed, by notice in writing absolutely determine the contract in any of the following cases.

- i) *If the contractor having been given by the Engineer-in-Charge a notice in writing to rectify, reconstruct or replace any defective work or that the work is being performed in an inefficient or otherwise improper or unworkman like manner shall omit to comply with the requirement of such notice for a period of seven days thereafter.*
- ii) *If the contractor has, without reasonable cause, suspended the progress of the work or has failed to proceed with the work with due diligence and continues to do so after a notice in writing of seven days from Engineer-in-Charge.*
- iii) *If the contractor fails to complete the work or section of work with individual date of completion on or before within the stipulated or justified extended date, on or before such date of completion; and the Engineer-in-Charge without any prejudice to any other right or remedy under any other provision in the contract has given further reasonable time in a notice given in writing in that behalf as either mutually agreed or in the absence of such mutual agreement by his own assessment making such time essence of contract and in the opinion of Engineer-in-Charge the contractor will be unable to complete the same or does not complete the same within the period specified.*
- iv) *If the contractor persistently neglects to carry out his obligations under the contract and/or commits default in complying with any of the terms and conditions of the contract and does not remedy it or take effective steps to remedy it within 7 days after a notice in writing is given to him in that behalf by the Engineer-in-Charge.*
- v) *If the contractor shall offer or give or agree to give to any person in Government service or to any other person on his behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for Government.*
- vi) *If the contractor shall enter into a contract with Government in connection with which commission has been paid or agreed to be paid by him or to his knowledge, unless the particulars of any such commission and the terms of payment thereof have been previously disclosed in writing to the Engineer-in-charge.*

- vii) *If the contractor had secured the contract with Government as a result of wrong tendering or other non-bonafide methods of competitive tendering or commits breach of Integrity Agreement.*
- viii) *If the contractor being an individual, or if a firm, any partner thereof shall at any time be adjudged insolvent or have a receiving order or order for administration of his estate made against him or shall take any proceedings for liquidation or composition (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purport so to do, or if any application be made under any Insolvency Act for the time being in force for the sequestration of his estate or if a trust deed be executed by him for benefit of his creditors.*
- ix) *If the contractor being a company shall pass a resolution or the court shall make an order that the company shall be wound up or if a receiver or a manager on behalf of a creditor shall be appointed or if circumstances shall arise which entitle the court or the creditor to appoint a receiver or a manager or which entitle the court to make a winding up order.*
- x) *If the contractor shall suffer an execution being levied on his goods and allow it to be continued for period of 21 days.*
- xi) *If the contractor assigns (excluding part(s) of work assigned to other agency(s) by the contractor as per terms of contract), transfers, sublets (engagement of labour on a piece-work basis or of labour with materials not to be incorporated in the work, shall not be deemed to be subletting) or otherwise parts with or attempts to assign, transfer, sublet or otherwise parts with the entire works or any portion thereof without the prior written approval of the Engineer-in-Charge.*

When the contractor has made himself liable for action under any of the cases aforesaid, the Engineer-in-Charge on behalf of the Governor of Manipur shall have powers:

- a) *To determine the contract as aforesaid so far as performance of work by the contractor is concerned (of which determination notice in writing to the contractor under the hand of the Engineer-in-Charge shall be conclusive evidence). Upon such determination, Security Deposit already recovered, Security deposit payable and Performance Guarantee under the contract shall be liable to be forfeited and shall be absolutely at the disposal of the Government.*
- b) *After giving notice to the contractor to measure up the work of the contractor and to take such whole, or the balance or part thereof, as shall be un-executed out of his hands and to give it to another contractor to complete the work. The contractor, whose contract is determined as above, shall not be allowed to participate in the tendering process for the balance work including any new items needed to complete the work.*

In the event of above courses being adopted by the Engineer-in-Charge, the contractor shall have no claim to compensation for any loss sustained by him by reasons of his having purchased or procured any materials or entered into any engagements or made any advances on account or with a view to the execution of the work or the performance of the contract. And in case action is taken under any of the provision aforesaid, the contractor shall not be entitled to recover or be paid any sum for any work thereof or actually performed under this contract unless and until the Engineer-in-Charge has certified in writing the performance of such work and the value payable in respect thereof and he shall only be entitled to be paid the value so certified.

[29] The applicant/respondent, vide letter dated 7.05.2021 sent and acceptance letter after execution of contract agreement and the same is extracted herein below:

**"PUBLIC WORKS DEPARTMENT
GOVERNMENT OF MANIPUR**

No EE/BO UCivilSectt/2021-22Imphal, the 27 May 2021

To

*M/S Sri Avantika Contractors (I) Ltd,
610-Nilgiri Block, Aditya Enclave,
Ameerpet, Hyderabad - 500038*

*Subject: Letter of Acceptance of tender for the
work "**Construction of Capital
Complex (Civil Secretariat
Component) at Mantripukhri,
Imphal - Balance Works**"*

Dear Sir

It is to convey that your tender for the work mentioned above has been accepted on behalf of the Governor of Manipur and conveyed approval of the Higher Tender committee vide no. 26/3/2021-W dt 25/05/2021 at your negotiated amount of Rs 167, 40,96,700 (Rupees One hundred sixty seven crore forty lakh ninety six thousand seven hundred only) inclusive of 12% GST for Civil Works, 18% GST for IEI Works and 1% Labour Cess which is a 2% reduction from your original quoted amount of Rs. 170,82,61,939.22

- 2(i) You are requested to submit the Performance Guarantee of atleast Rs 5,02,22,901.0 (Rupees five crore two lakhs twenty two thousand nine hundred and one only) i.e. 3% of the tendered amount within 7 days of issue of this letter i.e. by 02/06/2021. The Performance Guarantee shall be in the prescribed format as provided in the clause no.1 of the general Conditions of Contract (Clauses of Contract) for PWD., Manipur and shall be initially be valid for 12 months. In case the time of completion of the work gets enlarged, you shall get the validity of the Performance Guarantee extended to cover such enlarged time for completion of the work.*
- (ii) Failure to extended the validity of the performance guarantee before the expiry of the validity period will invite actions as appropriate under clause 1 of the general conditions of Contract (Clauses of Contract) for PWD, Manipur.*
- (iii) After recording of the completion certificate for the work by the competent authority, the performance*

guarantee shall be returned to the contractor, without any interest.

- (iv) In the event of the contract being determined or rescinded under the provisions of the any of the clauses/conditions of the agreement, the Performance Guarantee shall stand forfeited in full and shall be absolutely at the disposal of the Governor of Manipur*

- 3(i) On receipt of the prescribed performance Guarantee only necessary letter to commence the work shall be issued and the site of the work shall be handed over to you thereafter.*

Please note that the time allowed for carrying out the work as entered in the tender (12months) shall be reckoned from 10(ten) days after the date of issue of the letter of commencement of the work/work order and accordingly the stipulated date of completion.

You are to attend this office for signing the agreement within one weeks' time from the issue of commencement/work Order as mentioned above.

- 5 (i) The accepted amount is inclusive of cost of all items of work as mentioned in the bidding document including mobilization of all plants and equipment's, labour and labour related amenities, temporary site office and all other activities necessary and timely completion of the work.*

- (ii) The accepted amount id inclusive of all taxes/surcharges as applicable from time to time during the contract period in the state of Manipur i.e. GST, Income Tax, Labour Welfare Cess, octroy, Toll, ferry charges, Local Charges, Royalties, Turn Over Tax and all other charges.*

- (iii) Enhancement of the accepted amount shall not be entertained under any circumstances and it shall remain in except firm in cases of Extra, Substituted, deviated items which are to be executed with written direction of the department.*

- (iv) No Cost Escalation shall be entertained under any circumstances during the contractual period of 12 months.*

- 6 (i) Payment shall be made according to the Running Account Bill subject to availability of CDA released for the Head of Account with deduction of leviabale taxes/cesses etc.*

- (ii) *You shall sign an undertaking to the effect that you will not claim any bill unless and until CDA released for the Head of Account is available according of the availability of fund in the enclosed format (Annexure - III) and submit along with the Performance Guarantee by 06/02/2021.*
7. *You shall submit a Work programme for completion of the work during the stipulated time in PERT/CPM Network Chart/ M.S Project/Primavera within 15 days of the issue of letter of Acceptance of Tender.*
- 8 (i) *Security Deposit shall be collected by deduction if a sum at the rate of 2.5% gross amount of each running bill the sum along with the sum already deposited as earnest Money, will amount to Security Deposit of 2.5% of the Tendered value of the work, Earnest Money shall be adjusted first in the Security Deposit and further recovery of Security Deposit shall commence only when the upto date amount of Security Deposit starts exceeding the earnest money. Such deductions will be made and held by Government Securities or fixed deposits receipts prescribed in the contract clauses with validity period of 24 months (one year beyond the 12 months of contractual period). In case the time of the completion of the work gets enlarged, you shall get the validity of the Security Deposit extended to cover such enlarged time for completion of the work. This is in addition to the Performance Guarantee that the contractor is required to deposit as per Clause No. 2 mentioned above.*
- (ii) *Failure to extend the validity of the Security Deposit deposited s Government Securities before the expiry of the validity period will invite actions as appropriate clause of the General Conditions of Contract (Clauses of Contracts) PWD., Manipur.*
- (iii) *Security Deposit can be released against bank Guarantee issued by a scheduled bank on as accumulation to a minimum amount of Rs 5 lakhs subject to the condition that amount of any Bank Guarantee except last of shall not be less than Rs 5 lakh.*
- (iv) *The Bank Guarantee submitted against security deposit shall be initially be valid for 24 months one year beyond the contractual period of 12 months) The bank Guarantee submitted against Earnest Money shall also be extended as above.*

- (v) *The model of the Performance Guarantee/bank Guarantee Bond for security Deposit/Earnest Money is enclosed as Annexure-II.*
10. *You are also to obtain labour License as per the prevailing provision of Labour Contract Act/Labour permit statuses of the State.*
11. *GST Registration Certificate and other certificates as required by this office due to mandatory regulations of the Government, Manipur, in original along with attested copies of such certified, must procured before any payments is made.*
12. *All the terms and conditions as stipulated in the tender documents for the work shall remain unchanged. Any terms and conditions submitted by you other than stipulated in the tender documents issued by this office forming as part of the agreement shall be accepted.*
13. *The Agreement will be signed by your authorized representative and Executive Engineer, Building Division No. 1, PWD Manipur on each and every pages of the Contract document and on all enclosures.*
14. *Jurisdiction of Court in respect of any dispute case shall be under High Court of Manipur at Imphal.*
15. *This letter of acceptance of your tender along with all its enclosures and all other relevant documents relating of the negotiation process shall form part of the Agreement.*

Encl.: As stated above.

Yours faithfully
Sd/-
(L. Vivek Ray) Executive Engineer
Building Division No. 1 PWD,
Manipur"

[30] For determination of the dispute between the parties in the present case, the relevance of Clause – 25 of the Settlement of Dispute & Arbitration and the same is extracted herein below:

"Clause 25 – Settlement of Dispute & Arbitration:

"Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

- i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer or where there is no Chief Engineer, the Additional Director General (CE/ADG) who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/ADG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.*

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ ADG/ SDG or on expiry of aforesaid the time limits

available to DRC/ADG/SDG, may give notice to the Chief Engineer, Manipur PWD, or if there be no Chief Engineer, the Additional Director General/ Special Director General concerned or if there be no Additional Director General / Special Director General concerned of if there be no Additional Director General / Special Director General, the Director General, Manipur PWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/ADG/DG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-Charge to CE/ADG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- a. A party fails to appoint the second Arbitrator, or*
- b. The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Chief Engineer, Manipur PWD shall appoint the second or Presiding Arbitrator as the case may be.*

ii) Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 crore or less. Where claimed value is more than Rs. 20 crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitration and giving reference to the decision of ADG/SDG on the finding/ recommendation of DRC.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering and further he shall have earlier worked at a level not lower than Chief Engineer/ equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to the arbitral tribunal shall be as approved by Chief Engineer, PWD, Manipur. This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

[31] The present respondent/petitioner in the present miscellaneous case being aggrieved by the termination of contract agreement dated 11.04.2023 issued by Executive Engineer, Building Division No. I, PWD, Manipur filed the present writ petition impugning the said termination order and the same is extracted herein below:

Termination of Contract agreement dated 11.04.2023

"GOVERNMENT OF MANIPUR
PUBLIC WORKS DEPARTMENT

No. EE/BD-1/Civil Sectt/2022-23/1069 Imphal, the 11 April, 2023

To,
M/S Sri Avantika Contractors (1) Ltd. #610-8, Nilgiri Block,
Aditya Enclave. Ameerpet, Hyderabad-500038

Subject: Construction of Capital Complex (Civil
Secretariat Component) at Mantripukhri
Balance work Final Action under Clause 3
of the Contract Agreement

Ref: i) Agrt. No EE/BD-1/AGRT/2021-22/01 dt. 08-06-20

Sir,

Whereas various notices and intimations has been served
to you for the slow progress of works as enumerated
below:-

A. Intimations for Slow progress of works

1	EE/BD-1/Civil Sectt/2021-22/77 dt.17/08/2021 Augmentation of Labour strength and increase of work shifts	Annexure-I
2	EE/BD-I/Civil Sectt/2021-22/235 dt. 27/10/2021 Notice for slow Progress of works	Annexure-II
3	EE/BD-I/Civil Sectt/2021-22/270 dt.16/11/2021 -Notice for slow Progress of works	Annexure-III
4	EE/BD-I/Civil Sectt/2021-22/617 dt.30/03/2022 -Notice for slow Progress of works	Annexure-IV
5	EE/BD-I/Civil Sectt/2022-23/1 dt.01/04/2022 -Intimation of the minutes of meeting	Annexure-V
6	EE/BD-1/Civil Sectt/2022-23/74 dt.20/04/2022 -Hindrances due to non-availability of aggregates	Annexure-VI

7	<i>EE/BD-I/Civil Sectt/2022 dt.27/04/2022 -Reminder notice for slow progress of Works</i>	<i>Annexure-VII</i>
8	<i>EE/BD-II/Civil Sectt/2022/42 dt.02/05/2022 -Regarding non execution and discrepancies in Electrical & Electromechanical works for construction of Civil Secretariat Mantripukhri Imphal Manipur</i>	<i>Annexure-VIII</i>
9	<i>EE/BD-1/Civil Sectt/2022-23/165 dt.16/05/2022 -Reminder for submission of Work program</i>	<i>Annexure-IX</i>
10	<i>EE/BD-I/Civil Sectt/2021-22/dt.04/06/2022 -Delay in procurement of proritylemsilke Polycarbonate Sheet roofing at cut out portion and DYNA sheet roofing of Main Conference Hall.</i>	<i>Annexure-X</i>
11	<i>11 EE/BD-I/Civil Sectt/2021-22/301 dt.21/06/2022 Reminder for submission of Work program</i>	<i>Annexure-XI</i>
12	<i>EE/BD-1/Civil Sectt/2021-22/357 dt.11/07/2022 -Reminder for submission of Revised work program for completion</i>	<i>Annexure-XII</i>
13	<i>EE/BD-I/Civil Sectt/2021-22/358 dt.11/07/2022 -Removal of substandard item</i>	<i>Annexure-XIII</i>
14	<i>EE/BD-I/Civil Sectt/2021-22/382 dt. 20/07/2022 -Instruction on sanitary items to be adopted in North & South block.</i>	<i>Annexure-XIV</i>
15	<i>EE/BD-I/Civil Sectt/2021-22/387 dt.21/07/2022 -Notice for delay and inability to complete the original works</i>	<i>Annexure-XV</i>
16	<i>EE/BD-1/Civil Sectt/2021-22/424 dt.02/08/2022 -Reminder for submission of Bar-chart/ program of completion of CM Block</i>	<i>Annexure-XVI</i>

17	<i>EE/BD-1/Civil Sectt/2021-22/695 dt.17/08/2022 -Sanitary fittings-reg</i>	<i>Annexure-XVII</i>
18	<i>EE/BD-1/Civil Sectt/2021-22/511 dt 20/08/2022-Intentional delay in completion of the project</i>	<i>Annexure-XVIII</i>
19	<i>EE/BD-1/Civil Sectt/2021-22/605 dt. 23/09/2022 -Reminder for revised work programme for completion</i>	<i>Annexure-XIX</i>
20	<i>EE/BD-1/Civil Sectt/2021-22/617 dt. 28/09/2022 -Reminder for re-submission of revised work programme for completion</i>	<i>Annexure-XX</i>
21	<i>EE/BD-I/Civil Sectt/2021-22/627 dt.04/10/2022 -Justification of rate Adopted of extra/substitute rates</i>	<i>Annexure-XXI</i>
22	<i>EE/BD-1/Civil Sectt/2021-22/630 dt.04/10/2022 -Delay and inability to complete the works</i>	<i>Annexure-XXII</i>
23	<i>EE/BD-1/Civil Sectt/2021-22/647 dt 06/10/2022 -Execution of UPVC Window at CS projects</i>	<i>Annexure-XXII</i>
24	<i>EE/BD-I/Civil Sectt/2021-22/665 dt.11/10/2022 -Notice on taking action under clause 14 of agreement</i>	<i>Annexure-XXIV</i>
25	<i>EE/BD-I/Civil Sectt/2021-22/685 dt.14/10/2022 -Reminder to submit reply and work program for completion of work</i>	<i>Annexure-XXV</i>
26	<i>EE/BD-I/Civil Sectt/2021-22/687 dt.16/10/2022 -Reminder for submission of Bar chart/Program for completion</i>	<i>Annexure-XXVI</i>
27	<i>EE/ED-II/Civil Sectt/2022/203 dt.17/10/2022 -Reminder for submission of Bar Chart/program of completion</i>	<i>Annexure-XXVII</i>
28	<i>EE/BD-I/Civil Sectt/2022-23/694 dt.17/10/2022 -Seeking details on the execution of</i>	<i>Annexure-XXVIII</i>

	<i>work of UPVC windows, Door hardware fixtures, parking of vehicles, vitrified tiles and false ceiling in minister's block</i>	
29	<i>MISCW-1701/60/2021-WD-WD dt.30/10/2022 -Slow progress and failure to maintain milestone</i>	<i>Annexure-XXIX</i>
30	<i>EE/BD-1/Civil Sectt/2021-22/748 dt.04/11/2022 -Reminder to complete the remaining works</i>	<i>Annexure-XXX</i>
31	<i>EE/BD-1/Civil Sectt/2021-22/881 dt. 14/12/2022 -for immediate construction of DAP door</i>	<i>Annexure-XXXI</i>
32	<i>EE/BD-1/Civil Sectt/2021-22/885 dt.16/12/2022 -Failure to complete the work and slippage from proposed milestone</i>	<i>Annexure-XXXII</i>
33	<i>EE/BD-1/Civil Sectt/2021-22/889 dt. 19/12/2022 -Labour License-Para 10/violation of LOA</i>	<i>Annexure-XXXIII</i>
34	<i>EE/BD-1/Civil Sectt/2021-22/934 dt.08/01/2023 -Reminder for slow progress and inability to complete works</i>	<i>Annexure-XXXIV</i>

B. Show Cause Notices

1.	<i>EE/BD-I/Civil Sectt/2021-22/906 dt. 26-12-2022 -Show Cause Notice</i>	<i>Annexure-XXXV</i>
2.	<i>No. 102/SE-II/BD-I/Corp/2022/186 dt. 20.01.2023 - Show Cause against agreement No. Civil Sectt/EE/BD-I/Agmt/2021-22/1dt 08/06/2021 for the work Construction of Capital Complex (Civil Secretariat Component) at Mantripukhri – (Sh: Balance Works)</i>	<i>Annexure-XXXVI</i>
3.	<i>EE/BD-I/Civil Sectt/2021-22/947 dt. 21-01-2023 - 2nd Show Cause Notice</i>	<i>Annexure-XXXVII</i>

II. Whereas despite repeated reminders and show cause notices served to you, the work was delayed as per the schedule for the completion of the work submitted by you and also have failed to achieve milestones which is completely unsatisfactory.

III. Whereas under Clause 3 of the aforesaid agreement the Engineer-in-Charge shall have powers to take action under Clause 3 in the event of delay or suspension in the execution of the aforesaid work by the contractor so that in the opinion of the Engineer-in-Charge (which shall be final and binding), the contractor have already failed to complete the work by the extended date of completion, whereas you have delayed the execution of the aforesaid work and as per the opinion of the undersigned, the Engineer-in-Charge (which shall be final and binding), you will be unable to secure completion of the work by the extended date of completion and whereas you were served with show cause in this regard under this office letter no. EE/BD-1/civil Sectt/2021-22/947 dt. 21-01-2023 (list of letters and Show Cause Notices served to you are enclosed as Annexure) and your reply vide letter No. SACIL/CS/2022/275 dt. 24/01/2023 received in response to show cause has been considered carefully but not found to the satisfaction of the Engineer-in-Charge. Therefore, under powers delegated to me under Clause 3, I, L.N.Kom, the Engineer-in-Charge for the aforesaid work under the aforesaid agreement, for and on behalf of the Governor of Manipur, hereby

(i) Determine the contract as aforesaid upon which determination your earnest money deposit, security deposit already recovered and Performance Guarantee stand absolutely forfeited to the Government and shall be absolutely at the disposal of Government, and

(ii) Take out such part of the work out of your hand, as remains unexecuted, for giving it to another contractor or execute the work through other means by the Department to complete the work, and you shall have no claim to compensation for any loss sustained by you by reasons of your having purchased or procured any materials or entered into any engagements or made any advances on account of or with a view to the execution of the work or the performance of the contract. You are also hereby served with notice to the effect that the work executed by you will be measured up on 19th April 2023 for which you are asked to attend for joint measurement falling which the work will be measured by the department unilaterally in your absence and result of measurement will be final and will be binding on you.

(iii) You shall not be allowed to participate in the tendering process for the balance work, if the balance work is to be completed through a contractor.

(iv) Further you are open to approach the appropriate authority as provided under Clause No.25 Settlement of Dispute and Arbitration of the Conditions of the Contract Agreement to settle any disputes or grievances in this regard if any.

This is without prejudice to Government's right to take action under any other clauses or sub-clauses of the agreement and to realize Government dues and losses and damages whatsoever under such clauses or sub-clauses.

Encl: As stated above

Yours faithfully,

*(L. N. KOM)
Executive Engineer,
Building Division No. I
PWD, Manipur"*

[32] The Hon'ble Supreme Court in **(2022) 6 SCC 127** at
Para No. 19, 20 & 21 observed that

"19. The Specific Relief Act, 1963 was amended by Central Act 18 of 2018 when clause (ha) was inserted in Section 41 of the said Act to say:

"41. (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject-matter of such project."

20. Such amendment was in pursuance of the report submitted on 20.06.2016 of the Expert Committee. The report is as under:

"The Expert Committee set on examining the Specific Relief Act, 1963 submits its Report to Union Law & Justice Minister recommends modifications for ensuring ease of doing business.

The Expert Committee set on examining the Specific Relief Act, 1963 today submitted its Report to Union Law & Justice Minister Shri D.V. Sadananda Gowda here in New Delhi. In its report the committee has recommended

modifications in the Specific Relief Act, 1963 for ensuring the ease of doing business.

In the context of tremendous developments which have taken place since 1963 and the present changed scenario involving contract based infrastructure developments, public private partnerships and other public projects, involving huge investments; and changes required in the present scheme of the Act so that specific performance is granted as a general rule and grant of compensation or damages for non-performance remains as an exception, the committee decided –

To change the approach, from damages being the rule and specific performance being the exception, to specific performance being the rule, and damages being the alternate remedy.

To provide guidelines for reducing the discretion granted to courts and tribunals while granting performance and injunctive reliefs.

To introduce provisions for rights of third parties (other than for government contracts).

To consider addressing unconscionable contracts, unfair contracts, reciprocity in contracts, etc. and implied terms.

The committee observed that there is a need to classify diverse public utility contracts as a distinct class recognizing the inherent public interest/importance to be addressed in the Act. Any public work must progress without interruption. This requires consideration whether a court's intervention in Public Works would be minimal. Smooth functioning of public works projects can be effectively managed through a monitoring system and regulatory mechanism. The role of courts in this exercise is to interfere to the minimum extent so that public works projects will not be impeded or stalled.

21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India."

[33] The Hon'ble Supreme Court in **(2021)20 SCC 454** at Para No. 25 observed that

"25. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a

comparative assessment of conflicting technical reports and decide which one is acceptable."

[34] The Hon'ble Supreme Court in **(2005) 12 SCC 725**

at Para No. 7, 8, 9 & 10 observed that

"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 R. 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 scrutinized and in such a case writ jurisdiction should not be exercised. [see **State of Bihar V. Jain Plastics & Chemicals Ltd.**]

8. In a catena of cases this Court has held that where the dispute resolves round questions of fact, the matter ought not to be entertained under Article 226 of the Constitution [see **State Bank of India V. State Bank of India Canteen Employees Union and Chairman, Gird Corpn. Of Orissa Ltd. (GRIDCO) V. Sukamani Das**]

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. [see **G.M., Kisan Sahkari Chini Mills Ltd. V. Satrugan Nishad and Rourkela Shramik Sangh V. Steel Authority of India Ltd.**]

10. In **National Highways Authority of India V. Ganga Enterprises**, it was observed by this Court that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. [see **Har Shgakar V. Dy. Excise and Taxation Commr. and Divisional Forest Officer V. Bishwanath Tea Co. Ltd.**]"

[35] The Hon'ble Supreme Court in **(2021) 10 SCC 690** at Para No. 24 observed that

"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 flavor, 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 crystallized. 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 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 measurement or construction of roads."

[36] Perusal of the record, it is evident that there exists the dispute of fact between the two parties in respect of the work as the petitioner/respondent (M/s Avantika) in their affidavit-in-opposition dated 16.10.2023 filed in Misc. Case No. 140 of 2023 wherein the respondent/petitioner submitted that -

"at para No. 5 (page No. 3), it is stated as –

It is submitted that the respondent-company has executed 95% of the work and so far submitted bills of Rs. 100.78 crores."

at para No. 14 (page No. 7), it is also stated as follows-

"It is submitted that the respondent-company has executed 95% of the work, whereas the Department had stated that the respondent-company has completed 53.73% of the work."

As per the Joint-measurement report the percentage of work done by the respondent-company is 49% whereas according to the respondent-company the percentage of work done is 97.61% after the Joint-measurement."

at para No. 16 (page No. 11), it is stated and admitted that –

*"It is submitted that as explained in the above-mentioned paragraph the percentage of 95% of the work being completed by the respondent-company is correct, therefore the respondent-company has not made any false statement before this Hon'ble Court. Moreover, **the percentage of work done by the respondent-company is disputed and not yet determined by this Hon'ble Court.**"*

[37] Per contra, the learned counsel for the applicant/respondent submits that the work done by the respondent/petitioner was not 35% but only 45.27% i.e. Rs. 88.91 crores or otherwise only 53.73 as per the claim received by the Department. But, if the 35% which was stated by the petitioner in the writ petition is correct, the value of work will be of Rs. 184.78 crores but, such amount of bill are never received by the Department. Further, it is clarified by the learned counsel that the bills are to be paid on

measurement uncompleted works. Accordingly, the learned counsel submitted that there exists disputed question of fact.

The Hon'ble Supreme Court in **(2022) 12 SCC 815** at para No. 13 observed that

"13. *In K.D. Sharma V. SAIL [K.D. Sharma V. SAIL, (2008) 12 SCC 481], it was held that (SCC pp. 492-93, paras 34 – 39).*

"34. *The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. **It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.***

35. *The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R.v. Kensington Income Tax Commissioners [R.v. Kensington Income Tax Commissioners, (1971) 1 KB 486 : 86 LJB 257 : 116 LT 136 (KB & CA) in the following words:*

'..... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain itself on an ex parte statement he should make a full and fair disclosure of all the material facts – it says facts, not law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court

enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.'

36. *A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating. 'We will not listen to your application because of what you have done.'*** The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. *In Kensington Income Tax Commissioners [R. v. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 85 LKB 257 : 116 LT 136 (KB & CA)], Viscount Reading, C.J. observed : (KB pp 495 – 96)*

*'..... Where an ex parte application has been made to this Court for a rule nisi or other process, **if the court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.*** This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived. Before coming to this conclusion, a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the court when it reads the affidavit and

knows the true facts. But if the result of this examination and hearing is to leave no doubt that the court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.'

38. *The above principles have been accepted in our legal system also. **As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him.** He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppose (keep back) or not to disclose (conceal) other facts. **The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) false.** If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".*
39. *If the primary object as highlighted in Kensington Income Tax Commissioners [R.V. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJB 257 : 116 LT 136 (KB & CA) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". **Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court***

would be failing in its duty. *In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."*

[38] It is a fact that the contract between the applicants/respondents and respondent/petitioner entered into a contract for the construction of remaining work amounting to Rs. 133,38,53,287.00 for Construction of Capital Complex (Civil Secretariat component) at Mantripukhri and the agreement was executed between the respondent/petitioner and applicant/respondent No. 3 on 08.06.2021. The agreement was made in the following terms –

- (a) For agreement of Rs. 167.40 Crores : 12 months
- (b) For revised Agreement amount of Rs. 194.49 Crores : 14 months

It is also evident that the contract work was initially awarded to M/s Simplex Projects, but due to non-completion of the work within the stipulated time between the M/s Simplex Projects Limited and the applicants/respondents, the contract was terminated on 09.11.2019. Thereafter, the present respondent/petitioner was awarded to execute the remaining work within the above mentioned stipulated time. It is also evident that the extension of the work was granted to the respondent/petitioner 3 (three) times due to various factors and reasons. Lastly, the respondent/petitioner by a letter dated 18.07.2022 requested the

State applicant for extension of 240 (two hundred and forty) days time and the applicants/respondents wrote letters for the delay of completion of work to the respondent/petitioner and at the same time, the respondent/petitioner replied explaining various reasons for the delay of completion of the work.

It is also seen and evident that the bill payment for the portion of completed work as claimed by the respondent/petitioner and also claim made by the applicants/respondents and, paid by the applicants/respondents are disputed fact, as per the respondent/petitioner's contention/assertion, out of total bill amount of Rs. 100.78 crores, the applicants/respondents paid only a sum of 69.11 crores and 31.67 crores is due. On 26.12.2022, 20.01.2023 and 21.01.2023 the applicants/respondents sent show cause notices for the said work. The respondent/petitioner replied the said notices by putting the reasons of delay on 30.12.2022 and 24.01.2023.

It is also seen and evident that in connection with delay in completion of the work, PIL 34 of 2022 was filed before this Hon'ble Court for directing the respondents and petitioners to complete the remaining work so that the existing Manipur Secretariat may be shifted to the new building and with the said direction, this Hon'ble Court disposed of the PIL No. 34 of 2022. The Division Bench of this Hon'ble High Court after hearing the respective parties while disposing the said PIL issued the following directions:

"Considering the facts and circumstances of the case and the larger public interest involved, the PIL No. 34 of 2022 is disposed of with the following directions:

- (i) The respondent State is directed to decongest the traffic on the National Highway in front of the Old Manipur Secretariat by making arrangements for proper park of vehicles on both sides. Further, the respondent State is directed to strictly enforce the traffic rules to ensure illegal parked vehicles are booked.*
- (ii) The respondent State and the fourth respondent are directed to comply with their contractual obligations qua the completion of construction of Civil Secretariat work.*
- (iii) The respondent State is directed to pay the Outstanding dues as per the RA Bills raised by the respondent No. 4 and also approve the rates of deviations and extra items regarding the Civil Secretariat work at earliest.*
- (iv) The respondent State and the fourth respondent are directed to co-operate and work in the concert with each other to ensure that the Civil Secretariat work is to be completed within a period of three months from the date of receipt of a copy of this order.*
- (v) There will be no order as to costs."*

But, the contract agreement was terminated by the applicants/respondents under clause (3) of the agreement. As aggrieved, the respondent/petitioner filed the present writ petition.

[39] It is also seen and evident that as per the direction of this Hon'ble High Court's order dated 01.08.2023, the joint measurement for the work for Construction of Capital Complex (Civil Secretariat component) at Mantripukhri was carried out and joint

measurement report was furnished by the applicants/respondents on 27.09.2023 through the Registrar (Judicial). However, the respondent/petitioner refused to sign on some of the items in the list of items in the joint measurement. Thereafter, on 09.10.2023 the respondent/petitioner filed an affidavit with objection to the joint measurement, due to the factual dispute between the respondent/petitioner and the applicants/respondents.

[40] The respondent/petitioner filed contempt case (C) No. 120 of 2023 praying for taking contempt proceeding against the applicants/respondents no. 1 to 4 for their willful and deliberate disobedience of the final judgment and order dated 04.04.2023 in PIL No. 34 of 2022 and the same is pending before the Hon'ble Division Bench of this High Court.

[41] The applicants/respondents (State of Manipur through the Chief Secretary, Government of Manipur) filed review petition being No. 11 of 2023 praying for review/modification of the impugned judgment and order dated 04.04.2023 passed in PIL No. 34 of 2022 and to consider the PIL on merit and the same is pending before Hon'ble Division Bench of this High Court.

[42] Further, it is also seen and evident that in the order dated 01.08.2023 this Hon'ble Court was pleased to give directions to both the learned counsels to maintain status quo and portion of the said order is extracted herein below:

"3. After delivering the order by this Court, Mr. T. Momo, learned counsel for the petitioner represented that till the joint measurement is taken place, both the parties may be directed to maintain the status quo as on today.

4. Therefore, till the joint measurement is taken place, both the parties are directed to maintain the status quo as on today."

A perusal of the above paragraphs, it is seen and evident that the status quo order was given for specific period of time i.e. status quo to maintain till the joint measurement takes place and as per both the learned counsels and on facts as extracted earlier, it is admitted position of fact that the joint measurement has already been taken place and the report of the same was submitted before this Hon'ble Court and the same is placed on record. Point that needs to be underscored here is that neither of the parties filed any appeals for revision against the above mentioned interim order.

[43] It is also seen and evident that the respondent/petitioner in one of the paragraphs of the counter affidavit in reply to the present application of the applicants/respondents requested to give opportunity to file an additional affidavit and documents to supplement the affidavit in opposition and the same is extracted herein below:

“The respondent no. 1 craved leave of this Hon’ble Court to file an additional affidavit and documents to supplement the present affidavit-in-opposition, if required at a later stage.”

[44] It is also an admitted fact that the pleas taken by the respondent/petitioner are that as the present subject matter involved a public law character and the alternative forum chosen by the parties would not be in a position to grant appropriate relief, the present action of the State Government in terminating the present agreement in question is arbitrary, unreasonable and violative of the constitutional right of the petitioner. Therefore, the respondent/petitioner appropriately has taken step and filed the present writ petition and the maintainability issue raised by the applicants/respondents is not maintainable.

[45] In support of this plea, the respondent/petitioner relied upon series of Apex Court’s judgments which are extracted herein above.

[46] On the other hand, the learned AG submitted that there is question of disputed facts in the present litigation between the parties. There is breach of contract agreement and as such the matter may be allowed to be dealt with according to Arbitration Clause (Clause 25) as per the contract agreement entered between the two parties. Further, it is submitted by the learned AG that the MC(WP(C)) No. 357 of 2023

involvement of disputed question of facts was admitted by the writ petitioner in the objection affidavit dated 9.10.2023. With these submissions, learned AG in support of this cited several Hon'ble Apex Court's judgments which are extracted herein above.

[47] The learned AG, further, submitted that the respondent/petitioner filed the present writ petition by concealing or suppressing the relevant and material facts and as such the Court may dismiss the petition on this ground alone. In support of his plea, the learned AG relied upon the Apex Court's judgments referred to in the preceding paragraphs.

[48] After taking into consideration of the aforesaid reasons and in view of the observations made above and after hearing the learned counsel for the parties at length and also after going through the pleas taken by the parties as reproduced earlier and on the basis of narration made regarding the cases of the parties, this Court is of the view that it will be proper to hear both the parties at length on merit in the writ petition being WP(C) No. 358 of 2023 and dispose of instead of dealing only with the maintainability issue raised herein by the applicants/respondents.

[49] In the circumstances, both parties are directed to file their respective additional affidavits, if any, if desired to do so, before the date of final hearing.

But for the prayer No. (i) in the present miscellaneous application i.e.

"to vacate/modify the interim orders dated 01.08.2023 and dated 09.10.2023 and its subsequent extension orders passed in the instant writ petition being WP(C) No. 358 of 2023."

[50] On perusal of the orders dated 01.08.2023 and 09.10.2023 of this Court which are extracted earlier, it is seen and emerged that the said interim order dated 01.08.2023 was passed for the specific purpose for specific period i.e. **"till the joint measurement is taken place, both the parties may be directed to maintain the status quo as on today. Therefore, till the joint measurement is taken place, both the parties are directed to maintain the status quo as on today"**. But, the order dated 09.10.2023 was just the extension of the said interim order dated 01.08.2023.

[51] As it is an admitted position of the fact that the joint measurement was already made and the report has also already been filed and placed on record before this Court. As put out earlier, the said order dated 09.10.2023 was just the extension of the order dated 01.08.2023. Accordingly, I am of the considered view that the continuation of the status quo order i.e. order dated 01.08.2023 and its subsequent extension orders are not called for. It is worth to mention herein that both the parties did not file any appeal/revision against the said interim orders.

[52] Accordingly, the status quo order dated 01.08.2023 and its subsequent extension orders are vacated.

[53] With the above observation and direction, this present miscellaneous application is disposed of.

[54] List the writ petition being W.P.(C) No. 358 of 2023 for final hearing on 01.08.2024.

JUDGE

FR/NFR

Lucy/Bipin