

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 213 of 2025

ENGINEERING PROJECTS (INDIA) LIMITED

a Government of India Enterprise and a Company incorporated under the provisions of the Companies Act, 1956, having office at 21, Krishnanagar Road, Bijay Kumar Chomuhani, Agartala - 799001, Tripura, being represented herein through Mr. Samik Mistry, Executive Director of Engineering Projects(India) Limited.

-----Petitioner(s)

Versus

- 1. THE TRIPURA UNIVERSITY, (A Central University)**
Suryamaninagar, Agartala, Tripura(West), PIN - 799022,
Being represented through the Registrar, Tripura University, Suryamaninagar, Agartala, Tripura.
- 2. THE VICE CHANCELLOR**
Tripura University, Suryamaninagar, Agartala, Tripura(West), PIN - 799022, Tripura.
- 3. THE REGISTRAR**
Tripura University, Suryamaninagar, Agartala, Tripura(West), PIN - 799022, Tripura.
- 4. THE FINANCE OFFICER**
Tripura University, Suryamaninagar, Agartala, Tripura(West), PIN - 799022, Tripura.
- 5. THE EXECUTIVE ENGINEER**
Tripura University, Suryamaninagar, Agartala - 799022, Tripura.

-----Respondent(s)

For Petitioner(s)	:	Mr. Arnal Chakraborty, Advocate. Mr. Rishiraj Nath, Advocate.
For Respondent(s)	:	Mr. Rajeev Kumar, Advocate Mr. Sankar Lodh, Advocate.
Date of hearing and date of judgment and order	:	15.05.2025
Whether fit for reporting	:	Yes.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard learned counsel for the parties.

[2] This is a petition under Article 226 of the Constitution of India for seeking the following relief(s):

- i. Issue Notice upon the Respondents.
- ii. Call for the Records.
- iii. Issue Rule, calling upon the respondents and each one of them to show cause as to why a Writ of or in the nature of Mandamus should not be issued *inter alia*, directing the respondents and each one of them, their men, agents, subordinates and assigns to pay the petitioner immediately their admitted dues to the tune of Rs. 4,29,84,587/- (as explained in paragraph 11 above) along with interest @18% per annum or at such other rate as this Hon'ble High Court may deem fit and proper on and from January, 2022 till the date of actual payment along with such amount of damages and compensation as this Hon'ble High Court may deem fit and proper.
- iv. Issue Rule, calling upon the respondents and each one of them to show cause as to why a Writ of or in the nature of Mandamus commanding the respondent authorities and each of them their men, agents and subordinates to transmit all records pertaining to the case before this Hon'ble Court, so that conscionable justice may be rendered by directing the respondents to make the payments towards the legitimate dues of the petitioner along-with compensation and interest.
- v. Issue Rule, calling upon the respondents and each one of them to show cause as to why any other appropriate Writ/ Order / Orders or Directions should not be issued so as to give full relief to the petitioner;
- vi. Upon no cause being shown or upon insufficient causes being shown and upon hearing the parties and on perusal of records, Your Lordships may be pleased to make the Rule absolute in terms of prayers (iii), (iv) and (v) above.
- vii. Costs of and incidental to this proceeding;
- viii. Any other order or orders, relief(s) as this Hon'ble Court may deem fit and proper.
- ix. In the interim it is prayed that Your Lordships may be pleased to direct the respondents and each one of them their men agents and servants and subordinates to immediately pay the admitted dues of the petitioner including the unpaid amount of the 22nd R.A. cum Final Bill, the Escalations Bills as approved by the Sub- Committee of the University and the Security Deposit with such interests and compensation as this Hon'ble Court may deem fit and proper.

[3] It is the case of the petitioner that the respondent University issued the Letter of Authorization (LoA) dated 21.02.2014 in favour of Petitioner *inter alia* awarding the work of "Construction of Phase II Project Works (Part I) for Tripura University at Suryamaninagar at Tripura West (hereinafter referred to as the "Said Project") and a formal contract was executed by and between the parties on 23rd May, 2014. The petitioner submitted requisite Performance Bank Guarantee and also discharged all its contractual obligations diligently. However, the project could not be completed within the scheduled completion period of 30 months on account of various reasons which were not attributable to the petitioner as the delay was on

account of multifarious reasons including gross delay in handing over the Construction Drawings, Frequent Changes and modifications in the working drawings, change in scope of work, delay in approval and decisions on major issues including deviations, extra items etc., delayed and irregular payment of bills and other issues. In such circumstances as many as 5 extensions were granted without any penalty or imposition of Liquidated Damages. The initial lump sum contract value as awarded to the petitioner was Rs.47,07,70,435/-.

[4] The petitioner successfully completed the entire project and handed over the same to the University Authorities vide its Letter dated 28.12.2018 and handover was also duly taken by the respondent authorities. The respondent University had issued the Provisional Taking Over Certificate dated 05.03.2019 and based on the said Check List, all points were attended and rectified by the petitioner in due course. However, the issuance of Formal Work Completion Certificate remained pending despite completion and rectification works and formal completion certificate was required for raising the Final Bill by the petitioner and due to non-availability of the said Completion Certificate and delay in issuance thereof by the respondent, the drawing of final bill was delayed to a great extent. After a lot of persuasions by the petitioner, a joint site visit and inspection had taken place when the respondent authorities had found the works to be completed in all respect and accordingly, issued a Letter dated 24.12.2019 satisfactorily. The earlier dues and release of performance Bank guarantees were delayed even after the completion of the project recording due satisfaction of the Respondents and consequently several correspondences were exchanged.

[5] In the meantime the COVID -19 Pandemic had intervened and ultimately after several discussions the petitioner has submitted the Price Escalation Bills. The price escalation bill was however submitted in two tranches. The first

tranche of the revised Price Escalation Bill for the period up to 31.03.2017 was submitted on 04.11.2022 for an amount of Rs. 48,86,596.00 and the balance period till 31.12.2018 was raised by revised Price Escalation (Part II) Bill for an amount of Rs. 1,86,90,146.00 only under the cover of a letter dated 09.11.2022. Besides the price escalation bills, the petitioner is also admittedly entitled to the Final Bill amount of Rs.38,13,951/- and the refund of Security Deposit to the tune of Rs. 1,57,23,268/-. A plethora of correspondences in this regard has been made from the end of the petitioner. The petitioner has come to learn that the Sub-Committee of the University has duly approved the escalation bill for an amount of Rs. 2,34,47,368.00. the other dues against final bill, retention money and security deposits are all matters of record and hence falls within the realm of admitted dues. Despite the Sub- Committee of the University having certified the dues of the petitioner, the respondent Authorities had taken derogatory tactics and had not make the payments and being aggrieved by such acts, this Writ Petition is preferred before this Court for direction of payment of admitted dues with necessary consequential directions for interest and compensation as this Court may deem fit and proper.

[6] It is contended by the petitioner that the petitioner is admittedly entitled to the following amounts:-

- (i.) *Payment of 22nd R.A. cum Final Bill- Rs. 38,13,951/-*
- (ii.) *(Escalation Bill Rs. 2,35,73,742/-(out of which Rs. 2,34,47,368.00 has already been certified by the Sub-Committee of the Respondent University).*
- (iii.) *Security Deposit cum Retention money- Rs. 1,57,23,268/-.*
- (iv.) *Damages suffered by the petitioner towards overhead expenses- Rs. 38,71,000/-*
- (v.) *Interest on Final Bill till 31.05.2024- Rs. 12,13,944/-*
- (vi.) *Interest on Escalation till 31.05.2024- Rs. 45, 64,020/-*
- (vii.) *Interest on Security Deposit till 31.05.2024- Rs. 97,18,709/-*

[7] On the strength of the above, the counsel for the petitioner contended before this court that the writ petition is maintainable and it is not necessary on the part of the petitioner to move before the civil court seeking the relief mentioned above. To support his case, learned counsel for the petitioner has placed his reliance

on a judgment of the apex court in ***ABL International Ltd. and Another vs. Export Credit Guarantee Corporation of India Ltd. and Others*** reported in (2004) 3 SCC 553 where the apex court has observed in the following manner:

8. As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.

9. In our opinion this question is no more *res integra* and is settled by a large number of judicial pronouncements of this Court. In *K.N. Guruswamy Vs. The State of Mysore and others* reported in [1955 (1) SCR 305, para 20] this Court held:

"20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else.

....We would therefore in the ordinary course have given the appellant the writ he seeks. But owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go.

....A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law."

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in *K.N. Guruswamy Vs. The State of Mysore and others* was followed subsequently by this Court in the case of *The D.F.O, South Kheri & Ors. Vs. Ram Sanahi Singh* reported in 1971 (3) SCC 864 wherein this Court held:

"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in *K.N. Guruswamy's case* (supra), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power." (Emphasis supplied)

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16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in

our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of *Smt. Gunwant Kaur & Ors. vs. Municipal Committee, Bhatinda and Ors.* [1969 (3) SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held :

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

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18. This observation of the Court was made while negating a contention advanced on behalf of the respondent-Municipality which contended that the petition filed by the appellant- company therein apparently raised questions of fact which argument of the Municipality was accepted by the High Court holding that such disputed question of fact cannot be tried in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution. But this Court held otherwise.

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20. The learned counsel for the respondent then placed reliance on a judgment of this Court in the case of *VST Industries Ltd. vs. VST Industries Workers' Union & Anr.* [2001 (1) SCC 298]. In the said case, this Court held :

"In *Anadi Mukta* case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function."

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23 It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14 then we have no hesitation that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one each share is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the Memorandum of Association of the first respondent at Para 10 states :

"To undertake such functions as may be entrusted to it by Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus :

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

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

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

[8] On the point of arbitrariness of the respondents and the disputed question of facts, the learned counsel for the petitioner has prayed before this court to allow the writ petition.

[9] On the other hand, Mr. Rajeev Kumar, learned counsel appearing for the respondent-University, submits before this Court that the writ petition is not maintainable and it needs to be dismissed. He further submitted that the minutes dated 10.05.2024 of the sub-committee were referred to the Council. By the proceedings dated 01.10.2024, the said demand was specifically considered, and it was decided that the matter required referral to higher authorities in Delhi. He

further submits that the respondent is Tripura University, a Central University functioning under the aegis of the Ministry of Education, Government of India, the decision to escalate the matter to the higher authorities in Delhi was both appropriate and justified.

[10] The counsel for the respondent-University further argued that the contentions of the petitioner are not tenable since the demand was not admitted. He further draws the attention of this court to the Clause 25 of the agreement that deals with the arbitration. The said clause is reproduced here under for ready reference:

Clause 25: Settlement of Disputes by Arbitration

If any dispute, difference or question shall at any time arise between the parties as to the concerning of this agreement or concerning anything herein contained or arising out of this agreement or as the rights, liabilities and duties of the said parties hereunder, the same shall be referred to arbitration of three arbitrators, one of which to be appointed by each party and the third to be appointed by the two arbitrators. The decision of the majority of the arbitrators shall be final & binding on the parties. Subjects as aforesaid, the Arbitration & Conciliation Act 1986 or any statutory modification or re-enactment thereof and of the rules made for the time being in force under and any statutory modification thereof shall apply to such Arbitration the jurisdiction for settlement of any disputes concerning this agreement shall be at Agartala. The form & contents of the Award will be as per Article 31 of the above mentioned Act. The cost & expenses of Arbitration Proceedings will be shared equally by both the parties.

It is hereby provided that the Arbitrators so appointed shall make their award within four months from the date of Arbitrators entering on the reference.

[11] On course of his submission, he further stated that the petitioner has also invoked the arbitration clause and referred the matter to the arbitration and during the pendency of such arbitration proceeding, the petitioner has raised the present demand and filed writ petition. Further, it is also brought to the notice of this court that sub-contractor of the petitioner which is a partnership concern (**M/s M.P. Khatian, a Partnership Firm**) has preferred a writ petition being WP(C) 537 of 2024 before this court in which the Tripura University was one of the respondents

along with the petitioner herein . The petitioner therein in WP(C) 537 of 2024 prayed before the Division Bench for making the payments as per his demand and the Division Bench had dismissed the case vide order dated 14.08.2024 since the court opined that there were some disputed question of facts which need to be invoked between **M/s M.P. Khatian**, (the petitioner in WP(C) 537 of 2024) and the petitioner in the instant case and accordingly the same was rejected by the court.

[12] The relevant extract of the order dated 14.08.2024 is reproduced herein below for ready reference:

Having regard to the nature of the dispute raised by the petitioner arising out of execution of works under a contract and that too between the petitioner and respondent No.3-EPIL in which the Tripura University is nowhere privy, we are of the considered opinion that the writ jurisdiction is not the right remedy for seeking relief. The dispute between the petitioner and EPIL, if any, and that if related to TU could only be agitated in an appropriate forum agreed between the parties or before the competent Civil Court where issues of fact and construction of terms and conditions inter-parties between the petitioner and EPIL and between TU and EPIL could be gone into. As such, we are not inclined to entertain in the writ petition. It is accordingly dismissed. Petitioner may have liberty to approach the appropriate forum for relief.

[13] He has further drawn the attention of this court Para 20 of **ABL International Ltd.** (supra) and submits that the Hon'ble Supreme Court has totally agreed to granting leave however it restore the powers to exercise it all discretion.

For ready reference, the same is extracted herein below:

20. The learned counsel for the respondent then placed reliance on a judgment of this Court in the case of VST Industries Ltd. vs. VST Industries Workers' Union & Anr. [2001 (1) SCC 298]. In the said case, this Court held :

"In Anadi Mukta case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function."

[14] The counsel for the petitioner in his reply submits that since the matter is pending before the University, they have not taken any decision. He confines his argument only to the extent that at least his demand made, be considered and

decision be taken as expeditiously as possible. To which the counsel for the respondent-University objects the same and states that there cannot be any parallel proceeding since the arbitration has already been invoked by the petitioner. Now, it is not open for the petitioner to approach before this court under Article 226 of the Constitution of India and also to contest the arbitration proceeding.

[15] To buttress his contention as advanced by the counsel for the respondent-University, he placed his reliance on a judgment of the apex court in ***State of U.P & Others versus Bridge & Roof Company (India) Ltd.*** reported in (1996) 6 SCC 690 where the apex court has observed in the following manner:

15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e, in the writ petition filed by it. The High court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy commissioner made under the proviso to section 8-D (1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is governed by the provisions of the contract Act or may be, also by certain provisions of the sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil court as the case may be. whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High court under Article 226. Indeed, the High Court has not granted the said prayer.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration [Clause 67 of the Contract]. The Arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extra-ordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy - in this case, provided in the contract itself - is a good ground for the court to decline to exercise its extra-ordinary jurisdiction under Article 226. The said Article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 - whether for issuance of mandamus

or any other writ, order or direction - was misconceived for the reasons mentioned supra.

24. For the reasons mentioned hereinabove, the appeal is dismissed subject to the observations and clarifications aforementioned. It shall be open to the respondent, if it so chooses, to either raise a dispute and ask for reference of the dispute to arbitration as provided by the contract or to approach the civil court according to law, as the case may be, in the circumstances of the case there shall be no order as to costs.

[16] He further placed his reliance on another judgment of the apex court in **Union of India and Others versus Puna Hinda** reported in (2021) 10 SCC 690 where the apex court has observed in the following manner:

15. Thereafter, the writ petitioner filed a writ petition before the High Court on or about 23.11.2015 for quashing of the letter dated 27.8.2015. The writ petitioner was informed vide the said letter to process the bills through laid down channels before DC Contract and Commander Contract. The letter dated 21.10.2015 was also challenged which is a reply to the notice under Section 80 of the Code of Civil Procedure, 1908. A writ of mandamus was prayed for to pay a sum of Rs.31,57,16,134/- with 18% interest. In reply to the said writ petition, the assertions made by the writ petitioner were controverted but also an objection was raised that there was a clause for arbitration for resolving disputes arising between the parties, therefore, the writ petitioner should have approached the designated authority by appointment of an arbitrator.

16. The appellants in their affidavit had pointed out that after completion of the formation work, the writ petitioner had communicated expenses of Rs.16,93,51,980/- as against provision of Rs.16,26,71,039.40. It was asserted that the writ petitioner has been paid a sum of Rs.42.27 crores as against original cost of Rs.31.01 crores whereas the contractor has claimed a total sum of Rs.71.86 crores. The letter dated 29.10.2013 has been issued by the Headquarters, Border Road Task Force stating that the minimum distance was to be measured from center line of carriage way and not from the edge of the roadway. Thus, the entire claim was based upon imaginary and arbitrary grounds which was enhanced from time to time.

17. Mr. Nataraj, learned ASG appearing for the appellants, pointed out that there are serious disputes about the facts in respect of authenticity of the Joint Final Report and the work done. Therefore, such disputed question of facts could not have been adjudicated by the Writ Court as disputed question of facts relating to recovery of money could not have been entertained thereunder. Reliance has been placed upon the judgment of this Court reported as *Kerala State Electricity Board & Anr. v. Kurien E. Kalathil & Ors.* 22 (2000) 6 SCC 293 wherein it was held as under:

“10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a

statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.”

18. Mr. Nataraj also placed reliance on the judgment of this Court reported as *Joshi Technologies International Inc v. Union of India & Ors.*³ wherein the following was held:

“55. Law in this aspect has developed through catena of judgments of this Court and from the reading of these judgments it would follow that in pure contractual matters the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere such remedies are available only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract. Some of the case law to bring home this cardinal principle is taken note of hereinafter.

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59. On the basis of these facts, this Court observed that the aforesaid observations of the High Court relying upon *Ramana Dayaram Shetty case* [(1979) 3 SCC 489 : (1979) 2 LLJ 217] were not correct. Thus observed the Court, speaking through Ratnavel Pandian, J.: (*Ajai Pal Singh case* [(1989) 2 SCC 116 : (1989) 1 SCR 743] , SCC pp. 125-26, paras 21-22)

“21. This finding in our view, is not correct in the light of the facts and circumstances of this case because in *Ramana Dayaram Shetty case* [(1979) 3 SCC 489] there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in ‘other authority’ for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the ‘authority’ or its agent after

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple — *Radhakrishna Agarwal v. State of Bihar* [(1977) 3 SCC 457], *Premji Bhai Parmar v. DDA* [(1980) 2 SCC 129] and *Divl. Forest Officer v. Bishwanath Tea Co. Ltd.* [(1981) 3 SCC 238 : (1981) 3 SCR 662] ”

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

19. It was thus argued that in view of the arbitration clause available to

resolve the disputes, the order of the High Court was unwarranted and untenable. It was also argued that the High Court in the impugned order has held that resurvey was not possible as five monsoons have passed, therefore, the appellants were directed to approve the DPR and pay the pending bills on the basis of Final Joint Report.

[17] He further prayed to dismiss the case of the petitioner on the strength of the judgments placed before this court.

[18] In view of the submissions advanced by the counsel for the parties, this Court is of the prima facie view that the present writ petition is at a premature stage and is liable to be dismissed. The claim of the petitioner was placed before the sub-committee, and the respondent-University also considered the matter through the proceedings dated 01.10.2024. A letter dated 30.09.2024 issued by the Registrar, Tripura University was also addressed to the petitioner to submit all relevant documents relating to the escalation bill. However, there is neither any pleading nor any document placed before this Court to demonstrate that the petitioner complied with his obligatory duty towards the respondents.

[19] In so far as the prayer made in para 10 of the writ petition, indicating that admitted dues of Rs.4,29,84,587/-, the petitioner has failed to draw the attention of this court as to who has admitted the amounts raised by the petitioner and under what circumstances.

[20] Insofar as **ABL International Ltd.** (supra) is concerned, which is relied upon by the petitioner to argue that the respondents acted arbitrarily, there is no evidence placed to show in what manner the university acted arbitrarily in depriving the petitioner of the legitimate right to claim the bill. Insofar as other consideration with regard to disputed question of facts, the counsel has referred the Para no. 16 of **ABL International Ltd.** (supra). After a bare reading of the said paragraph, this Court is of the opinion that, at this juncture, the writ petition is at a premature stage for a final decision. Moreover, the counsel for the petitioner has

failed to substantiate his case by clearly pointing out the alleged dispute raised by the respondents.

[21] However, it is not disputed that the petitioner has invoked the Arbitration Clause 25 of the contract and the matter is pending before the Arbitrator. Since the matter is already initiated under Arbitration proceeding, it is not open for the petitioner to initiate parallel proceeding by approaching before this court under Article 226 of the Constitution of India. Any interference with this writ petition would frustrate the arbitration proceeding.

[22] In view of the foregoing discussion, this Court is not inclined to consider the case of the petitioner to grant any such relief as sought for and the same is liable to be dismissed.

Accordingly, the writ petition stands dismissed, As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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