

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 927 of 2025****Decided on: September 9, 2026**

M/s Pradhan Mantri Bharatiya Jan Aushadhi Kendra at Pt. Jawahar Lal Nehru Govt. Medical College & Hospital, Chamba .. Petitioner

Versus

State of Himachal Pradesh and others Respondents

Coram**Hon'ble Mr. Justice Sandeep Sharma, Judge.****Whether approved for reporting?****For the Petitioner:**

Mr. Sanjay Jaswal and Ms. Vandna Kumari, Advocates.

For the Respondent(s):

Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan, Deputy Advocate General, for the respondents.

Sandeep Sharma, J. (oral)

By way of present petition, the petitioner has prayed for the following main relief:

“That a writ in the nature of Mandamus may kindly be issued, thereby, directing the Respondents to release the total balance amount of medicines etc. for the supply of the medicines etc. to the respondent's Hospital by the petitioner's firm as well as for providing /selling medicines etc. free of cost to the patients i.e. availed the facility of HIM Care Cards & Ayushman Cards and patients falling under other schemes of the govt. diagnosed and prescribed medicines by the afore-said Hospital vide Annexure-P/4 to Annexure-P/6 i.e. Rs.87,68,881/- @ of 12% interest per annum, as well as Rs.5,00,000/- as compensation in favour of petitioner for dragging in the un-necessary litigation and harassing, without any fault, on his part, in the interest of justice and fair play.”

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Sanjay Jaswal and Ms. Vandana

Kumari, Advocates, appearing for the petitioner is that despite repeated requests, a sum of Rs.87,68,881/- payable by respondent No.2 is not being released to the petitioner, as a result of which the petitioner is under financial distress. It is also the grouse of the petitioner that though vide judgment dated 30.11.2024 passed by this Court in CWP No. 5961 of 2022, titled M/s Bharat Pharmaceutical & Surgery Agency v. The State of Himachal Pradesh and others, Court has categorically held that since there is no agreement *inter se* parties qua the fact that the petitioner herein was under obligation to pay rent for the space provided by Rogi Kalyan Samiti to set up Jan Aushadhi Store, respondents were not justified in claiming rent but yet Rs.9,90,000/- is being claimed by respondents qua rent.

3. Quintessential facts, necessary for the adjudication of the case at hand, as per pleadings and material adduced on record by respective parties, are that in the year 2018, respondent No.2, on the request of petitioner, agreed to provide space in back of OPD for opening Jan Aushadhi Kendra under Pradhan Mantri Bharatiya Jan Aushadhi Pariyojna, as per communication dated 28.5.2018 (Annexure R-1). The Committee concerned,, while deciding to provide space near OPD Block near Blood Bank, for opening Jan Aushadhi Store, under Bhartiya Jan Aushadhi Pariyojna, stipulated that the store hall be constructed/erected at own cost by the petitioner. There is no specific mention, if any, with regard to rent, if any, payable by the petitioner, for the space, proposed to be provided to him, vide aforesaid communication. Since, some dispute arose *inter se* petitioner and respondent No.2, on account of non-payment of bills submitted by the petitioner qua the medicines supplied by him to the

Hospital as well as patients availing benefits under Him Care and Ayushman Schemes etc., respondent No.2, vide notice dated 17.8.2022, issued by Medical Superintendent-cum-Member Secretary, Executive Council, Rogi Kalyan Samiti, called upon the petitioner to deposit rent for the space/shop, amounting to Rs.10,000/- for each month since 1.6.2018. Besides above, respondent No.2 also asked petitioner to vacate the premises/space vide aforesaid communication.

4. Being aggrieved and dissatisfied with aforesaid communication, petitioner earlier approached this Court, by way of CWP No.5961 of 2022, which ultimately came to be decided vide order dated 30.11.2024 (Annexure P-11).

5. Though, having taken note of the pleadings as well as material adduced on record by respective parties, in the above writ petition, this court refused to interfere with order, inasmuch as petitioner was called upon to vacate the premises, but categorically observed in judgment dated 30.11.2024, that since there was no agreement executed *inter se* parties qua rent, if any, payable by the petitioner for the use of space provided to him by Rogi Kalyan Samiti to run Jan Aushadhi Kendra, respondents were not justified in claiming rent.

6. Though, after passing of judgment, which has attained finality, petitioner was never insisted to deposit the amount, if any, payable on account of rent but certainly, till date, petitioner has not been paid outstanding amount of Rs.87,68,881/- for supply of medicines to the Hospital and patients under Him Care, Ayushman and other schemes, as such, petitioner has approached this Court, in the instant proceedings, praying therein for the reliefs, as have been reproduced herein above.

7. Pursuant to notices issued in the instant proceedings, respondents have filed reply, wherein though facts, noticed herein above, have not been disputed, but attempt has been made to refute the claim of the petitioner, on the ground that in regard to Ayushman Bharat /Him Care schemes, the amount of various medicines and other consumable items provided to patients is usually received/ recouped from the insurance company engaged by the Government and after receiving the amount, payments are made to concerned suppliers and as on the date of filing reply, more than Rs.3.50 Crore was pending to be received /recouped from Insurance Company. It is further stated in reply that as and when amount is received/ recouped, payment of authorized claims will be made accordingly.

8. Since, there is dispute with regard to amount, this Court vide order dated 16.9.2025, called upon learned Deputy Advocate General to inform the court that as to what amount, as per respondents, is payable to the petitioner. Vide aforesaid order, this Court also called upon learned Deputy Advocate General to apprise the Court, how respondents are claiming rent from the petitioner, when such issue has been already put to rest in appropriate legal proceedings, in favour of the petitioner.

9. Pursuant to directions contained in the aforesaid order, Mr. Vishal Panwar, learned Additional Advocate General has placed on record communication dated 8.9.2026, issued under the signatures of Medical Superintendent/ respondent No.2 College, enclosing therewith minutes of meeting of Rogi Kalyan Samiti, held on 14.7.2022, which is taken on record.

10. As per aforesaid communication, payment claimed by the petitioner through bills is Rs.35,53,309/- but since petitioner has quoted rates of branded medicines coupled with the fact that he was authorized to claim amount qua generic medicines, his authorized claim, pending for payment is only Rs.32,07,272/-. It is also mentioned in the aforesaid communication that payments of the petitioner were made from to time but no specific details with regard to payments made to the petitioner have been given in the aforesaid communication. Most importantly, in the aforesaid communication, amount of Rs.10,000/- per month from 1.6.2018 to 31.8.2026, i.e. Rs.9,90,000/-, on account of rent, has been again claimed.

11. Mr. Vishal Panwar, learned Additional Advocate General, fairly states that on account of passing of judgment dated 30.11.2024 in CWP No. 5961 of 2022, titled M/s Bharat Pharmaceutical & Surgery Agency v. The State of Himachal Pradesh and others, which has attained finality, respondents are not justified in claiming any amount qua rent but, certainly, petitioner is not entitled to the amount, as is being claimed by him in the instant petition, rather, he is entitled only to Rs.32,07,272/-. Mr. Panwar, learned Additional Advocate General further states that since various disputed questions of facts are involved in the case, as such, present petition is not maintainable, rather appropriate remedy, if any, available to the petitioner is to file a civil suit.

12. Per contra, Mr. Sanjay Jaswal and Ms. Vandana Kumari, Advocates, state that since factum with regard to purpose of medicines by the Hospital as well as supply made to indoor patients is not disputed rather stands admitted, petitioner is entitled to amount, as is being claimed. To substantiate aforesaid claim, Mr. Jaswal invited attention of

this Court to a number of bills placed on record suggestive of the fact that number of generic as well as non-generic medicines were being supplied to the Hospital as well as indoor patients. Bills submitted by the petitioner qua supplies made by him to the petitioner and indoor patients have not been disputed by respondent No.2.

13. Leaving everything aside, respondents themselves have admitted the claim of the petitioner to the tune of Rs.32,07,272/-. If it is so, petitioner is entitled to aforesaid amount forthwith. No document, worth credence has been placed on record by the respondents that the petitioner, while running Jan Aushadhi Kendra was only permitted to make sale of generic medicines, rather, after he having received prescription from the doctors, proceeded to supply medicines, as per bills. If it is so, denial of payment to the petitioner qua non-generic medicines, if any, supplied by the petitioner, is wholly unjustified.

14. There is yet another aspect of the matter that once respondent No.2 in its communication dated 8.9.2026, has admitted that a sum of Rs.32,07,272/- is payable to the petitioner, this court, while exercising power under Art. 226 of the Constitution of India, can always issue directions to the respondents to release said amount, forthwith, alongwith upto date interest.

15. Interestingly, in the case at hand, no agreement was ever executed *inter se* petitioner and respondent No.2, while setting up Jan Aushadhi Kendra in Hospital premises. Similarly, there is no agreement *inter se* parties with regard to classification of drugs/ medicines which could be supplied/sold by the petitioner, while running Jan Aushadhi Kendra. Once, there is no dispute qua liability of the respondents for amount of

Rs.32,07,272/-, this court sees no impediment in considering the prayer of the petitioner, while exercising power under Article 226 of the Constitution of India. Aforesaid issue has already been settled by the Hon'ble Apex Court in **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.** (2004) 3 SCC 5553, whereby Hon'ble Apex Court has categorically held that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the Court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit, rather, in writ petition, if the facts require, even oral evidence can be taken. Crux of the aforesaid judgment is that writ Court has jurisdiction to entertain writ petition, where disputed questions of facts exist and there is no absolute bar for entertaining writ petition if the same arises out of contractual obligations and/or involves disputed question of facts. Relevant paras of judgment supra, are reproduced herein:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt. Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.

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

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

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

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.” 8. In the aforesaid judgment, it has been categorically held that in appropriate cases, a writ petition against State or instrumentalities of State, arising out of contractual obligation is maintainable even if some disputed questions of facts arise for consideration.

16. Hon'ble Apex Court, while placing reliance on **ABL International** supra, reiterated in **Food Corporation of India v. SEIL Ltd.** (2008) 3 SCC 440, that the matters involving public law elements, are amenable to writ jurisdiction. Relevant paras of the aforesaid judgment are reproduced herein under:

“21. Jurisdiction of the High Court to entertain a writ application involving contractual matter was considered by a Bench of this Court in **ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors.** [(2004) 3 SCC553] wherein upon referring to a large number of decisions, it was held :

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.

22. Reliance placed by Mr. Sharan on **M/s. Burmah Construction Company v. The State of Orissa & Ors.** [AIR 1962 SC 1320] is not apposite. Claim made therein was a pure money claim. It was in that situation observed that the High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a

civil liability arising out of a breach of contract to pay an amount of money due to the claimant.

23. Article 14 of the Constitution of India has received a liberal interpretation over the years. Its scope has also been expanded by creative interpretation of the court. The law has developed in this field to a great extent. In this case, no disputed question of fact is involved.

24. The High Court, in an appropriate case, may grant such relief to which the writ petitioner would be entitled to in law as well as in equity.

25. We do not, thus, find any substance in the contention of Mr. Sharan that while exercising its review jurisdiction, no interest on the principal sum could have been directed to be granted by the High Court. A writ court exercises its power of Review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of *actus curiae neminem gravabit* (An act of the courts shall prejudice none). We appreciate the manner in which the learned Judge accepted his mistake and granted relief to the respondents.”

17. High court of Andhra Pradesh had an occasion to deal with similar facts as exist in present case while rendering judgment dated 22.3.2022 in Writ Petition No. 2511 of 2022. In the said judgment, High Court of Andhra Pradesh held that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable. High Court of Andhra Pradesh, while returning aforesaid finding also placed reliance

upon judgment rendered by Hon'ble Apex Court in **ABL International** supra. Relevant para of the aforesaid judgment is reproduced herein below:

“13. This Court opine that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, we hold that the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable.”

18. Leaving everything aside, once part of liability/amount out of total amount of Rs.87,68,881/- i.e. Rs. 32,07,272/- is admitted, this Court sees no impediment in exercising power under Article 226 of the Constitution of India, thereby directing the respondent No.2 to release the aforesaid amount of Rs.32,07,272/-, within a period of three months, failing which the petitioner would be entitled to interest at the rate of 6% per annum from the date, aforesaid amount had actually become due till the date of actual payment to the petitioner. Ordered accordingly.

19. So far remaining amount i.e. amount after deducting admitted claim of Rs.32,07,272/- out of total amount claimed by petitioner i.e. rs.87,68,881/-, is concerned, which is being denied to the petitioner, on the ground that petitioner had no permission to sell branded drugs, respondents after verifying factum with regard to purchase, if any, made by Hospital authorities of branded drugs with effect from 11.4.2019 to 13.5.2021 and their supply to patients under Him Care and Ayushman Bharat etc. as per prescription with effect from 24.1.2019 to 11.2.2023, shall also proceed to make payment qua the same, within a period of six months.

With these observations, the petition is disposed of, so also pending applications, if any.

(Sandeep Sharma)
Judge

September 9, 2026
(Vikrant)