

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 4639 of 2026****Date of Decision: September 10, 2026**

Vivek Kumar Petitioner

Versus

State of Himachal Pradesh and others ... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹ Yes.**For the Petitioner:** Mr. Yudhvair Singh Thakur, Advocate.**For the Respondents:** Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol and Mr. Vishal Panwar Additional Advocate Generals with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge(oral):

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

“Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents, thereby directing them to forthwith release the payment of Rs.48,33,801/- towards the pending running bills dated 14.02.2024 (Rs.42,46,623/) and 08.01.2025 (Rs.5,87,178/-), along with interest at the rate of 9% per annum from the respective due dates till actual realization.”

2. Quintessential facts, as emerge from the record are that on 21.10.2022, petitioner applied through e-tendering process for execution of various work under Jal Jeevan Mission at Seri Kothi and Batwara. Being lowest bidder, petitioner came to be awarded work vide letter dated 22.8.2023. After completion of 75% work, petitioner submitted two running bills amounting to Rs. 42,46,623 and Rs.14,57,478, respectively on

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

14.2.2024 and 22.4.2024 but out of aforesaid bills, one bill dated 22.4.2024 amounting to Rs. 14,57,478/- has been paid and a sum of Rs. 48,33,801/- is pending. Since despite repeated requests, respondent State failed to pay aforesaid amount, he has approached this Court, in the instant proceedings, praying therein for reliefs as have been reproduced herein above.

3. Pursuant to notices issued in the petition, respondent-State has filed reply, wherein facts, as have been noticed herein above, have not been disputed, rather stand admitted. Mr. Anoop Rattan, learned Advocate General, while referring to reply filed by respondent State, states that though work was got executed by respondent State, but funds were to be provided by Government of India under Jal Jeevan Mission Scheme. He states that till the time, funds are not provided by Government of India, it may not be possible to release amount as is being claimed by petitioner. He further contended that only Rs.2.00 Crores were received as Central Assistance against total requirement of Rs.6.10 Crore, during this year alone.

4. Having heard learned counsel for parties and perused material available on record, this court finds that tendering process was initiated by respondent State and letter of award was also issued by an officer of respondent State. No document has been adduced on record suggestive of the fact that while inviting tender, contractors were apprised that their bills shall be cleared by the Union of India out of funds, agreed to be provided under Jal Jeevan Mission scheme. There is ample material adduced on record, suggestive of the fact that petitioner taking note of tender floated by the Department of Jal Shakti, applied for work and he being lowest bidder was ultimately awarded work in question.

5. Careful perusal of communication dated 2.2.2026 (Annexure P-5) issued by Executive Engineer, Jal Shakti Division, Sundernagar clearly reveals that pending payment of 1st and 2nd running bills amounting to Rs. 48,33,801/- for work of 'providing LWSS to GP Seri Kothi and Batwara in Tehsil Sunder Nagar was to be made by afore authority. As has been discussed herein above, one bill of Rs.14,57,478/- has been cleared but till date Rs.48,33,801/- is pending.

6. Once, there is no dispute qua liability of the respondents, 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.

7. 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.”

8. 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.”

9. Though, reply filed on behalf of respondents suggests that the funds for execution of various works under Jal Jeevan Mission were to be provided by Government of India but that issue/dispute, if any, is inter se Government of India and Government of Himachal Pradesh and certainly, the petitioner, who has executed the work, on the basis of tender floated by State Government, cannot be permitted to suffer on account of delay in payment, which is otherwise admitted by the respondents in their reply as well as communication dated 2.2.2026.

10. Though, at this stage, learned Advocate General attempted to argue that present petition is not maintainable, on account of non-impleadment of Union of India but this Court, is not persuaded to agree with aforesaid submission of learned Advocate General. Dispute, if any, qua release of funds, if any, under Jal Jeevan Mission cannot be an impediment for the

petitioner to claim his bills, which are required to be paid by respondent State pursuant to its having invited tender, may be, under Jal Jeevan Mission, rather, appropriate remedy for the respondent State is to take up the matter with the Government of India, to make available requisite funds enabling them to liquidate liability of contractors like the petitioner.

11. Having taken note of communication dated 13.5.2021 (Annexure R-3/1), wherein it is provided that 90% funds are to be provided by Union of India and 10% by respondent State, this Court before parting, wishes to observe that request, if any, made by respondent State to Union of India for release of funds shall be considered expeditiously by Union of India, so that liability of large number of contractors under Jal Jeevan Mission is cleared. Mr. Balram Sharma, learned Deputy Solicitor General of India is directed to apprise Secretary, Ministry of Jal Shakti, Drinking Water, Government of India with regard to passing of instant order, enabling him to do the needful in terms of observations made in the instant order.

12. Consequently, present petition is allowed. Respondents are directed to clear the pending bills of petitioner, within six weeks, failing which petitioner would be entitled to 6% interest. Needless to say, petitioner is always at liberty to take resort to various terms and conditions of agreement, if any, executed inter se parties, for redressal of his surviving grievances, with regard to payment of interest in accordance with law.

All pending applications stand disposed of.

**(Sandeep Sharma),
Judge**

September 10, 2026;
(vikrant)