

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1367 of 2023

Date of Decision: 9.9.2026

Neeraj Vohra

.....Petitioner

Versus

Union of India and Ors.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Jagat Pal, Advocate.

For the Respondent: Mr. Rajinder Thakur, Central Government Counsel,
for respondent No.1.
Mr. Ankit Kaloti, Advocate, for respondents No. 2 to
5.

Sandeep Sharma, J. (Oral)

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

“a) That the appropriate writ may kindly be issued and the respondents be directed to release the pending payment of Rs.8,92,920/- alongwith @9% interest per annum from the date of work done till its realization, in the interest of law and justice.”

2. Quintessential facts of the case, as emerge from the pleadings adduced on record by the respective parties are that respondents No. 2 and 3 invited tenders dated 4.10.2018 for empanelment of firms for supply, installation and commissioning of grid connected roof top solar plants

having capacity of 8 MW, 2 MW and 2.5 MW, which were to be installed in the government buildings located in various cities/towns of Himachal Pradesh including Mandi. After evaluation of bids, specific number of firms, including firm of the petitioner, were empanelled to work on the lowest approved rates. Under 2 MW program of the Ministry of New and Renewable Energy, Government of India, 809 kW GCRTPS (Grid Connected Roof Top Solar) plants were also installed in different panchayats of District Mandi. Petitioner, who was empanelled with respondents No. 2 and 3, came to be awarded work for installation of 201 kW capacity plants in 64 panchayats on recommendation of Project Officer, Mandi. Copy of agreement executed inter se petitioner as well as HIMURJA is available on record as Annexure R1, annexed with reply filed on behalf of respondents No. 2 to 5.

3. In terms of agreement executed between parties, petitioner was to install 201 kW capacity of GCRTPS in different panchayats of District Mandi (64 in total) along with three other vendors. As per timeline, petitioner herein was scheduled to complete the work on or before 5.3.2020. Though petitioner was able to complete the work of fifty five panchayats on or before afore date, but work in remaining nine panchayats could not be completed by him due to non-availability of material on

account of restrictions imposed by Government of India as well as State of Himachal Pradesh in the wake of COVID-19. However, subsequently, pursuant to the extension granted by the HIMURJA, petitioner also completed the remaining work of nine panchayats on 4.5.2020.

4. Precisely, the grouse of petitioner as has been highlighted in petition and further canvassed by Mr. Jagat Pal, learned counsel representing petitioner, is that though petitioner has completed entire work awarded to him vide award letter dated 21.9.2019 (Annexure P1), but till date, he has not been released the entire payment despite there being recommendation made by Project Officer, Mandi vide communications dated 26.8.2020 and 31.8.2020 (Annexures P11 and P12), specifically stating therein that petitioner has completed 100% work, and as such, he is entitled to release of entire amount.

5. As per own case of the petitioner, he has been already released due and admissible payment qua 55 panchayats, but dispute, at present, is with regard to non-payment of work executed by the petitioner in nine panchayats. It is also admitted case of the petitioner that 40% of the amount i.e. Rs. 3,82,680/-, qua nine panchayats already stands released to the petitioner on 18.1.2022, but still sum of Rs. 8,92,920/- is payable,

which is not being released now on the ground that the petitioner failed to execute the work within the stipulated time.

6. Case of the petitioner is that once after imposition of restrictions on account of COVID-19, petitioner was granted extension by HIMURJA i.e. respondent No. 2, on 27.4.2020 (Annexure P7), coupled with the fact that petitioner completed the work within extended time and thereafter, 40% amount was also released, there is no occasion, if any, for respondent No. 2 to deny release of remaining amount on the ground that petitioner failed to complete the work within stipulated period. In the afore background, petitioner is compelled to approach this Court in the instant proceedings, praying therein for reliefs as have been reproduced hereinabove.

7. Pursuant to notices issued in the instant proceedings, respondent No. 1 and respondents No. 2 to 5 have filed their separate replies.

8. Facts, as have been noticed hereinabove, have not been disputed by the respondents, but an attempt has been made by respondent No. 1 to refute the claim of the petitioner on the ground that since on account of expiry of timeline i.e. 5.3.2020, contract of the petitioner had

ended, he is estopped from claiming the amount, if any, payable to him for his having executed work, if any, after 5.3.2020.

9. Mr. Rajinder Thakur, learned Central Government Counsel, vehemently argued that extension of time, if any, granted by the HIMURJA is of no consequence because work of installation of grid connected roof top solar plants of various capacities was being executed under the policy dated 30.3.2017 (Annexure C1), under "Grid Connected Rooftop and Small Solar Power Plants Programme" launched by Government of India, wherein it clearly stands mentioned that work awarded in terms of aforesaid policy shall be completed within 18 months period i.e. on or before 5.3.2020. He states that though documents produced on record by the petitioner suggest that HIMURJA granted extension of time, but since no consent, if any, was taken by HIMURJA from Government of India, Government of India cannot be compelled to release the remaining 60% of the subsidy.

10. Mr. Ankit Kaloti, learned counsel representing HIMURJA, while adopting arguments raised by Mr. Rajinder Thakur, learned Central Government Standing Counsel, further submitted that though no formal order with regard to extension of time was passed by the HIMURJA, but petitioner herein was advised repeatedly to complete the work awarded in terms of award letter in his favour. He states that since work was not

completed within the stipulated time, petitioner is not entitled to release of the remaining amount, which otherwise is to be released/ paid by Government of India. He states that whatever amount was available with HIMURJA already stands released to the petitioner.

11. Having heard learned counsel for the parties and perused material available on record, this Court finds that out of 64 panchayats, petitioner had completed work in 55 panchayats within time i.e. on or before 5.3.2020. Dispute qua payment, if any, inter se the petitioner and respondents is for the work executed by the petitioner in terms of award letter (Annexure P1) in nine panchayats. Admittedly, petitioner failed to complete the work of nine panchayats within the stipulated time, but material adduced on record by the respective parties clearly reveals that petitioner was unable to complete the work in remaining nine panchayats on account of non-availability of material. Since there was an outbreak of COVID-19 in various parts of the world including India and as a consequence thereof, there was complete lockdown, Government of India vide Office Memorandum dated 19.2.2020 (Annexure P2) clarified that if the disruption of supply chain is due to spread of Coronavirus in China or any other country, same should be considered as a case of natural calamity and Force Majeure Clause can be invoked wherever considered appropriate,

following the due procedure as above. Taking note of aforesaid Office Memorandum, respondent No.1-Ministry of New and Renewable Energy (MNRE), itself issued Office Memorandum dated 20.3.2020 (Annexure P-4) with regard to time extension in schedule commissioning of date of RE projects considering disruption of supply chain due to spread of Coronavirus in China or other countries as Force Majeure (FM) event, which is re-produced herein below.

“OFFICE MEMORANDUM

Sub: Time Extension in Scheduled Commissioning Date of RE Projects considering disruption of the supply chains due to spread of coronavirus in China or any other country as Force Majeure (FM) event - reg.

(1). The Government of India, vide O.M. No. 18/4/2020-PPD dated 19th February, 2020 (copy enclosed) from Procurement Policy Division, Department of Expenditure, Ministry of Finance, has clarified that the disruption of the supply chains due to spread of coronavirus in China or any other country should be considered as a case of natural calamity and Force Majeure Clause (FMC) may be invoked, wherever considered appropriate, following the due procedure.

(2). This Ministry, by way of various representations as well as discussion during various meetings with Renewable Energy (RE) Developers and RE associations, has been receiving requests for considering disruption of the supply chains due to spread of coronavirus in China or any other country as Force Majeure (FM) event for grant of appropriate time-extension in Scheduled Commissioning Date of RE projects as per Force Majeure Clause in concerned contractual agreements.

(3). This issue has been examined in the Ministry and in line with the above referred O.M. dated 19.02.2020 of Government of India, it has been decided that:

(a) All Renewable Energy implementing agencies of the Ministry of New & Renewable Energy (MNRE) are hereby directed to treat delay

on account of disruption of the supply chains due to spread of coronavirus in China or any other country, as Force Majeure.

(b) The Renewable Energy implementing agencies may grant suitable extension of time for projects, on account of coronavirus, based on evidences / documents produced by developers in support of their respective claims of such disruption of the supply chains due to spread of coronavirus in China or any other country.

(c) Further, all project developers claiming aforesaid disruption and desirous of time extensions, shall make, a formal application to SECI/ NTPC/ other implementing agencies, giving all documentary evidence(s) in support of their claim. SECI/ NTPC/ Implementing agencies shall examine the claim objectively and grant appropriate Extension of Time (EoT) based on facts. While considering the requests for grant of extension of time on account of disruption of the supply chains due to spread of coronavirus in China or any other country, SECI/ NTPC/ any other implementing agency may fully satisfy itself that the claimants were actually affected due to disruption of the supply chains due to spread of coronavirus in China or any other country in the period for which extension of time has been claimed. The implementing agencies shall also ensure that no double relief is granted due to overlapping periods of time extension granted for reasons eligible for such relief.

(d) The State Renewable Energy Departments (including agencies under Power/ Energy Departments of States, but dealing in renewable energy) are also requested to treat delay on account of disruption of the supply chains due to spread of coronavirus in China or any other country, as Force Majeure and issue their own instructions on the subject.

(4). This issues with the approval of Hon'ble Minister of State (I/C) (NRE & Power.”

12. Immediately after issuance of aforesaid Office Memorandum, petitioner vide communication dated 8.3.2020 requested the Director, HIMURJA to grant extension of 30 days for completing the project. While making aforesaid request, he specifically referred to Force Majeure Clause on account of Coronavirus. Though respondent-HIMURJA did not reply to

aforesaid communication dated 8.3.2020 (Annexure P-3), but subsequently vide communication dated 27.4.2020 (Annexure P7) addressed to the petitioner in reference to his email dated 22.4.2020, directed him to complete installation and commissioning of grid connected roof top plants at different panchayat buildings in District Mandi at different sites as mentioned in the supply order.

13. Though there is no document available on record suggestive of the fact that pursuant to aforesaid request made by the petitioner with regard to extension of time, decision, if any, was taken by the HIMURJA, but perusal of communication dated 27.4.2020 issued under the signature of District Magistrate, Mandi, District Mandi, clearly reveals that on the request of HIMURJA, petitioner herein was granted permission to execute the work at Bali Chowki and Darang during COVID period. Immediately, after grant of aforesaid permission by the Additional District Magistrate, Mandi, petitioner executed the remaining work and completed the same on 4.5.2020, as is evident from Annexure P10.

14. Though after his having sent communication dated 24.8.2020, wherein he furnished detail with regard to execution of remaining work in nine panchayats, petitioner was released 40% of the amount for the work executed by him, but still sum of Rs. 8,92,920/- is payable for his having

executed work in nine panchayats in Darang and Bali Chowki development blocks. It is also not in dispute that after execution of work in terms of award letter (Annexure P1), request for return of earnest money /bid security amount has been already processed. It is also not in dispute that respondent HIMURJA, after verifying work executed by the petitioner in all the panchayats for which he was awarded work, has already approved release of earnest money, but now dispute is only with regard to payment qua the work allegedly executed by petitioner after expiry of timeline.

15. At this stage, it would be apt to take note of communications dated 26.8.2020 and 31.8.2020 (Annexures P11 and P12), perusal whereof reveals that Project Officer, HIMURJA, Mandi, after having verified the work done on the spot, himself recommended for release of 100% payment in favour of the petitioner subject to final examination of facts and circumstances at the level of competent authority of HIMURJA. Though careful perusal of reply filed by the respondent-Union of India as well as HIMURJA, reveals that same nowhere disputes factum with regard to execution of work in remaining nine panchayats as well as correctness of the bills furnished by petitioner qua these remaining nine panchayats, but yet, attempt has been made by respondents to refute the claim of the petitioner on the ground that he executed the work in remaining nine

panchayats after 5.3.2020, whereafter no extension could have been granted.

16. As has been discussed hereinabove, respondent-HIMURJA, having taken note of prayer made by the petitioner vide communication dated 8.3.2020 (Annexure P3), wherein he specifically referred to Force Majeure Clause, proceeded to send communication dated 27.4.2020, thereby calling upon the petitioner to complete the installation and commissioning of grid connected roof top plants at different panchayat buildings in District Mandi at different sites as mentioned in the supply order. After receipt of prayer made by the petitioner for extension of time, HIMURJA itself sent a communication to District Magistrate, Mandi seeking therein permission for departmental work construction. District Magistrate, Mandi vide communication dated 27.4.2020 (Annexure P8) permitted the petitioner to execute the work at Bali Chowki and Darang during COVID-19 restrictions.

17. In aforesaid circumstances, this Court is not persuaded to agree with counsel representing respondents that no extension was granted to the petitioner, rather, material adduced on record clearly reveals that petitioner not only completed the work within the extended time, but he also furnished his bills, which were further verified by the field

staff/competent authority. Interestingly, in the case at hand, petitioner was released 40% of the amount on 18.1.2022 and thereafter, HIMURJA failed to pay remaining amount on the ground that funds are not being released by Government of India.

18. True, it is that, as per Scheme launched by Government of India, project commissioning timeline in case of General Category States/UTs was 15 months from the date of sanction by the Ministry and for North East/Special Category States/UTs/Islands, the timeline was 18 months, meaning thereby, in any eventuality, work in terms of aforesaid scheme was to be executed within the time frame as notified in the scheme, but since it is not in dispute that while work was under execution, COVID-19 struck the world. Government of India itself, having taken note of impact of COVID-19 on the execution of various works, issued Office Memorandum dated 19.2.2020 (Annexure P2), clarifying that since there is disruption in supply chain due to spread of Coronavirus in China and other countries, delay in execution of work, if any, shall be considered as a case of natural calamity and force majeure clause shall be invoked.

19. Taking note of aforesaid notification issued by Government of India, Ministry of New and Renewable Energy itself issued communication dated 20.3.2020 especially with regard to time extension in schedule

commissioning of RE projects considering disruption of supply chains due to spread of Coronavirus in China or other countries as Force Majeure. Though Mr. Rajinder Thakur, learned Central Government Standing Counsel, attempted to argue that aforesaid Office Memorandum cannot be made applicable in the case at hand for the reason that no material was to be imported by the petitioner from China as far as execution of work is concerned, but such prayer of him deserves outright rejection for the reason that bare perusal of Office Memorandum, though suggests that same was issued on account of disruption of supply chains due to spread of Coronavirus in China or other countries, but it nowhere suggests that same was to apply only qua such works where certain items were to be imported from China or other countries, rather as per aforesaid Office Memorandum, time was to be extended for execution of all RE projects initiated by Ministry of New and Renewable Energy, including the work which petitioner executed in various parts of District Mandi.

20. At this stage, Mr. Rajinder Thakur, learned Central Government Standing Counsel, further argued that present petition is not maintainable on account of involvement of disputed questions of facts. He further submitted that appropriate remedy, if any, for the petitioner is to file a civil suit in the competent court of law, however, having taken note of

communications dated 26.8.2020 and 31.8.2020 (Annexures P11 and P12) issued under signature of Project Officer, HIMURJA, Mandi, this Court is not persuaded to agree with him. Bare perusal of aforesaid communications clearly reveals that Project Officer, after having visited the places/spots where petitioner executed the work, himself recommended for release of 100% payment in favour of the vendor. Moreover, there is no document adduced on record by the respondents suggestive of the fact that petitioner failed to execute the work as per award letter, rather aforesaid communications themselves suggest that work executed by the petitioner in terms of award letter was found to be satisfactory and there was no complaint against the petitioner.

21. Leaving everything aside, respondents themselves released 40% of payment on 18.1.2022 for the work executed by the petitioner in terms of award letter (Annexure P1). There is no document adduced on record by the respondents suggestive of the fact that on account of delay in execution of work, notice/letter, if any, was ever issued to the petitioner, thereby expressing intention of the department to cancel allotment made in his favour. There is no letter/communication suggestive of the fact that on account of failure of the petitioner to complete work within timeline, tender awarded in his favour was cancelled. To the contrary, there is sufficient

material adduced on record suggestive of the fact that on the request of the petitioner, time was extended by HIMURJA, which itself approached District Magistrate for permission to continue work during Coronavirus.

22. Leaving everything aside, once Government of India vide Memorandums dated 19.2.2020 and 20.3.2020 (Annexures P2 and P4) itself permitted all the project developers as well as contractors to seek time extension on account of disruption in supply chains due to spread of Coronavirus coupled with the fact that petitioner applied for extension of time, which was allowed in his favour, there appears to be no justification to deny payment to the petitioner qua remaining amounts.

23. Aforesaid issue has already been settled by the Hon'ble Apex Court in **ABL International Ltd. Vs. 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 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.”

24. 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.

25. 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.”

26. 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.”

27. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, present petition is allowed and respondent No. 1-Union of India, is directed to release the remaining amount to respondent No. 2, enabling it to pay the balance amount to the petitioner expeditiously, preferably within a period of two months, failing which, petitioner would be entitled to interest at the rate of 6% per annum.

28. List for compliance on 8.12.2026.

September 9, 2026

(manjit)

**(Sandeep Sharma),
Judge**