

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.11608 of 2026
Date of Decision: 07.09.2026

Arvind Thakur

.....Petitioner

Versus

State of Himachal Pradesh & Ors.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Jagdish Thakur, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocates General with Mr. Ravi
Chauhan & Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, J. (Oral)

By way of instant petition, petitioner has prayed for the following main reliefs:-

“a. That a writ in the nature of mandamus may very kindly be issued to the respondents thereby directing the respondents to make payment of the final bills of Rs.40,30,704/- as per Annexure P-2 (colly) prepared by the respondents itself qua the works in question, completed by the petitioner within time bound period.

b. That the respondents be also directed to pay interest to the petitioner on the amount of Rs.40,30,704/- payable at the rate of 18% per annum from the date of submission of bills on 2022 till date of actual payment of amount.”

2. Precisely, the case of the petitioner, as has been highlighted in the petition and further canvassed by learned counsel for the petitioner, is that though he completed the construction work

awarded to him well within the stipulated time and his running bills have also been duly approved, but final payment has not yet been released to him, as a result thereof he is facing financial distress.

3. Pursuant to notices issued in the instant proceedings, respondent-State has filed reply, wherein it has virtually admitted the claim of the petitioner. It is averred in the reply that payment of bill is subject to availability of funds and respondent No.2, vide letter dated 10.08.2026, has already requested the higher authorities to allocate sum of Rs. 42,10,700/- so that the pending bills of the petitioner could be cleared.

4. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that petitioner herein, who is a Class-D civil contractor, was awarded seven different works on account of his being lowest bidder, for a total sum of Rs.49,62,053/-. After completion of work within the stipulated time and as per agreement, respondent-department, after carrying out the requisite measurements, prepared the first and final bills/MBs, particulars whereof are given in paragraph 5 of the writ petition, but till date, sum of Rs. 40,30,704/- has not been paid to the petitioner. Respondent has made part payment of Rs.2,00,000/-, out of Rs.3,88,538/- payable with respect to work, but there is no specific denial to the fact that still a sum of Rs.40,30,704/- is payable to petitioner on account of his having

completed different works, as detailed in para 4 of the writ petition. At this stage, it is apt to reproduce communication dated 28.07.2026, issued by the Executive Engineer, Dharampur Division, HP PWD Dharampur.

“HIMACHAL PRADESH PUBLIC WORKS DEPARTMENT

To

The Superintending Engineer,
Dharampur Circle,
HPPWD Dharampur,

Subject:-Requirement of funds during the year 2026-27 against CWP.No. 11608/2026 titled Arvind Thakur Versus State of HP.

Sir,

In this connection, it is submitted that Shri Arvind Thakur. Govt Contractor. S/o Sh. Gopal Singh Thakur, R/O Village Lambar, PO Kamlah, Tehsil Dharampur. Distt. Mandi (HP) has filed CWP No. 11608/2026 in the Hon'ble High Court of Himachal Pradesh Shimla for want of payment of various works executed by him. As per the plaint, the petitioner is an enlisted Class D Contractor with HP. PWD. and 7 number of works were awarded to him by the then Executive Engineer and the petitioner contractor has executed the awarded works The bills for the same were prepared by the concerned the then Junior Engineer and verified by the Assistant Engineer but the payment was not released to him. Consequently, petitioner contractor filed above CWP and the Hon'ble High Court while hearing the petition has passed following order on dated 15.07.2026:-

“Payments due and admissible to the petitioner for the work statedly completed by him be released in his favour by the next date of hearing.

List on 14.08.2026.

Reply, if any be also filed in the meanwhile

CMP No. 17167 of 2026"

Upon verification of the record, it has been found that bills in respect of all the seven works were verified by the then Assistant Engineer in favour of the petitioner-contractor for gross amounting to Rs. 42,10,700/- and this amount is admissible / due to the petitioner contractor. The detail of works executed by the petitioner contractor and payment admissible due to him is enclosed herewith on the proforma attached.

In this connection, the Assistant Engineer to the Executive Engineer, Dharampur Division, H.P. PWD. Dharampur, was authorized vide this office Letter No. PW DPD-AB Arvind Case 2026-27/2371-72 dated 11.05.2026 to carry out physical verification the works executed by the petitioner-contractor. The Assistant Engineer has submitted his report certifying that the works executed at site, including the profile of formation cutting were found to be correct and satisfactory. He has further reported that the execution at site is in conformity with the entries recorded in the Measurement Book (photocopies of the letter and report submitted are attached alongwith for ready reference).

It is therefore, requested that the funds amounting to Rs 42.10,700/- Rs Forty two lac's ten thousands seven hundred) only may kindly be arranged under relevant Head of Account from the competent/authority and be conveyed to this office, so that the pending liability of the said contractor can be cleared and compliance may be made to the Hon'ble Court order to avoid further litigation in the matter please.

- Encl.:-1) Brief history of the case
 2) Proforma for requirement of funds
 3) Orders passed by the Hon'ble Court
 4) Copies of above mentioned letters.

Executive Engineer
 Dharampur Division
 HP.PWD. Dharampur

Copy to the Engineer in Chief, Nirman Bhawan, Nigam Vihar, HP PWD Shimla-2 for favour of information and necessary action please.

Copy to the Chief Engineer (H.Z.), HP. PWD. Hamirpur for favour of information and taking necessary action please.

Copy to the Assistant Engineer, Marhi Sub-Division. HP PWD. Marhi, for information with the direction to pursue the matter with the higher office for necessary action.

Executive Engineer
Dharampur Division
HP.PWD. Dharampur

5. Careful perusal of aforesaid communication clearly reveals that seven works awarded to the petitioner stand executed in the year 2022, but on account of non-availability of funds, sum of Rs.42,10,700/- is yet to be paid, and in that regard, demand has already been raised to the government. Petitioner, who is a Class-D Civil contractor, had completed the works, as detailed hereinabove, in the year 2022, but even after expiry of four years, amount due to him has not been paid, as a result thereof, he was not only compelled to leave the work of contractor-ship, but at present, is working as a vocational teacher to meet his both ends. Besides above, petitioner is being constantly harassed by the financial institution from where he had availed loan for execution of the aforesaid works.

6. Mr. Ravi Chauhan, learned Deputy Advocate General, while fairly admitting the factum with regard to preparation of final bills, has also admitted the amount as has been claimed to be paid by

the department, but he states that same shall be disbursed only after receipt of adequate funds from the Government.

7. Though it is not in dispute *inter se* parties, that in terms of agreement arrived *inter se* them, dispute if any, qua non payment of bill is to be adjudicated by the arbitrator, if any, appointed with the consent of parties or as per direction issued by the Court under Section 11 of the Arbitration and Conciliation Act but once there is no dispute qua the liability of the respondents and as of today, Rs.42,10,700/- is payable to the petitioner, 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. 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 hereinbelow:

“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.

8. 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.”

10. 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. Leaving everything aside, once the liability to pay the amount, sought to be released through instant petition, is admitted, coupled with the fact that some amount had become due to the petitioner in the year 2022, this Court sees no impediment in exercising power under Article 226 of Constitution of India, thereby directing the respondent-department to pay the balance amount of ₹42,10,700/- 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 from the date aforesaid amount had actually become due to the petitioner. Ordered accordingly.

10. The petition stands disposed of in the aforesaid terms, along with all pending applications.

**(Sandeep Sharma)
Judge**

**September 07, 2026
(sunil)**