HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

W.P.No.5884 of 2002

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in withholding the amount due to the petitioner vide respondent's letter bearing No.HMW&SB? MD/Payments/2001-2002, dated 07.02.2002 as illegal, arbitrary and against the principles of natural justice and consequently direct the respondents to forthwith release the amount due to the petitioner i.e., Rs.25,85,631/- along with performance guarantee amount of Rs.79,100/-.

2. Brief facts which are necessary for disposal of the writ petition are that the petitioner is a registered Private Limited Company engaged in manufacturing and laying pipelines for water supply, etc. The 1st respondent made a publication inviting tenders for manufacturing, supplying, lowering, laying, jointing, testing and commissioning of 600 MM dia P.S.C Trunk Feeder Main from 5 ML capacity G.L.S.R. at Alwal to Fathe Balaiah Nagar Sump in Alwal Municipality. The estimated contract value is Rs.36,56,817.84 ps and the approximate value of the work to be done under the agreement was Rs.31,61,037.40 ps. As the petitioner company has quoted the lowest offer, after satisfying and fulfilling all the conditions, the work has been awarded to the petitioner company and an order was also issued in its favour vide order No.DP? HMW.SSB.MegaCity/Pipeline/LOA/98-99/1307, dated 26.02.1999. An agreement was entered into by the petitioner with the respondent, under proceedings T.No.25/98-99, dated 24.03.1999. After completion of the work, the respondents have prepared a cheque for Rs.11,11,320/- on 09.09.1999, but the same was not released and the same was kept with the respondents only. After

completion of work, final bill has been prepared and submitted by the petitioner on 26.05.2001 for the balance amount of Rs.16,15,713.90 ps. The total bill came to be Rs.27,27,028.90 ps and M-book was signed by the respondents on 26.05.2001. In spite of several reminders and requests, the said amount was not released though the work was completed 18 months back. The Bank guarantee amount of Rs.79,100/- was also withheld.

3. Ultimately, on 07.02.2002, the 2nd respondent had written a letter admitting the liability of the amount due to the petitioner for the work completed by it as Rs.25,85,631/-, which was calculated after deducting 2.5% tax and that the said amount had been adjusted towards the matter which had been pending before Arbitrator. The amount due for work done by the petitioner at Visakhapatnam, Water Supply Improvement Scheme, the respondents have adjusted against the amount due in this work and an amount of Rs.18,61,000/- has also been adjusted. The respondents have enclosed a cheque for Rs.44,339.30 ps stating to be balance amount due to the petitioner.

4. Additional affidavit is also filed by the petitioner stating that subsequent to the filing of the writ petition, the S.No.1 work referred to in the impugned letter(relating to Misrigunj work) was a subject matter of an Arbitration and the Arbitrator passed an Award for a sum of Rs.1,97,372/- in favour of the petitioner on 15.03.2003. Against said Award, Petitioner filed O.P.Nos.16 and 17 of 2003 and the respondent filed O.P.No.22 of 2003 to set aside the awarded granted in favour of the petitioner. By common order, both the OPs filed by the petitioner were dismissed and OP filed by the respondent was allowed setting aside the Award. Against the Common order in Ops, the petitioner preferred CMA Nos.197 and 264 of 2011 and C.M.A.No.351 of 2003 and same are pending. Unless and until these cases are decided, the respondents cannot

effect recovery on the alleged due under Misrigunj work and on this ground also, the impugned letter becomes in operative. In respect of paras 4.3 of the impugned letter, the work relating to Visakhapatnam, after dismissal of W.P.No.3500 of 1994, the petitioner filed OS No.364 of 1997 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad and the same was dismissed on 23.09.1994 on the ground of principle of r*es-judicata*. Against the said judgment, CCCA No.250 of 1999 was filed. The Hon'ble Division Bench of this Court allowed the appeal on 02.07.2013. Aggrieved by the said judgment, respondents preferred Spl. Leave Petition (Civil) CC No.6060/2014 before the Hon'ble Supreme Court, with a delay. By order dated 17.04.2014, the Supreme Court condoned the delay and dismissed the SLP. Thereafter, the Municipal Administration and Urban Development (c) Department issued G.O.Rt.No.780, dated 10.10.2014 for release of payment covered by order in CCCA No.250 of 1999, dated 22.07.2013. the respondent deposited a sum of Rs.40,20,362/- through RTGS on 06.03.2015. Aggrieved by the action of the respondents in adjusting the amount payable to the petitioner and denying payment of said amount, the present writ petition is filed.

4. Counter affidavit is filed by the respondents denying the averments in the affidavit filed in support of the writ petition stating that the tender submitted by the petitioner was accepted. Consequent upon the acceptance of the tender of the petitioner, a forwarding slip to accompany original agreement dated 24.03.1999, a supplementary agreement dated 16.06.2001 was also executed between the petitioner and the first respondent and also on behalf of the 2nd respondent. As per Clause-8 of the forwarding slip, it is evident that the petitioner had signed the copy of the APDSS and its Addenda Volume brought upto date, which is also enclosed to the

Agreement and the same forms part of the Agreement. The bill amount payable to the petitioner at Rs.27,27,028.90 PS is also denied and amount payable to the petitioner is said to be Rs.25,85,631/-. The present writ petition is not maintainable against the issuance of impugned letter dated 07.02.2002 either in law or on facts, since it is a dispute and as per Clause-73 of PS to APDSS, petitioner's only remedy is to go to Civil Court of competent jurisdiction by way of regular suit as an effective and alternative remedy, which is provided in the agreement itself executed by and between the parties. That the contracts/agreements, dated 24.03.1999 and 16.06.2001 are ordinary civil contracts which are not statutory contracts and contracts not involving public element cannot be challenged in a writ petition for their breach and the remedy for such breach is to approach competent civil court. Similarly, the writ petition is not maintainable for recovery of money under contracts. As per Clause-71 of A.P. Detailed Standard Specification, it is not necessary that the amount must have been presently due and payable or must have been either admitted or determined by the Court or Atbitrator. The only requirement was that there was a claim for payment of money arising out of the contract to justify action under Clause-71 for recovery. Arbitration proceedings pertain to the works of Reach-I only. Following three works were entrusted to the petitioner and agreements were entered into by and between the parties.

i) 10.08.1981. Name of work: 'supplying, laying, joining and testing 1200mm, 1000mm and 900 mm dia PSC main from Misrigunj Reservoir to Purana Haveli under remodelling scheme (Reach-I)

ii) 27.5.1987. Name of Work: 'manufacturing, supply, delivery, lowering, laying, jointing, testing, excavation and refilling of 1200mm dia PSC pipes, specials and valves for gravity main from Singapur Balancing Reservoir to Osman Sagar GLSR, from Ch.250.00 to 500.00 (Reach-II)

iii) 27.5.1987. Name of Work: 'manufacturing, supply, delivery, lowering, laying, jointing, testing, excavation and refilling of 1200mm dia PSC pipes, specials and valves for gravity main from

Singapur Balancing Reservoir to Osman Sagar GLSR, from Ch.500.00 to 766.00 (Reach-III).

In all the three agreements, it is clearly mentioned that the preliminary specifications to APDSS form part of the agreements. As such, Clauses-71 and 73 of PS to APDSS are applicable. The petitioner has to pay amounts to the respondents under the works for Reaches-I, II and III as follows:

S.No.	Name of the work	Agreement No.	Total amount due to HMWSSB Rs.	Deposits available with HMWSSB Rs.	Net amount due to HMWSSB after adjusting the deposits Rs.
1.	Manufacturing, supplying, laying, jointing and testing 1200/1000/900mm dia PSC pipeline from Misrigunj Reservoir to Purana Haveli under remodelling scheme.	6/SE/PH/WWWC/81-82, dt:10.8.1981 entered with SE, Water Works Circle, Hyderabad.	9,26,716.00	1,59,406.00	7,76,310.00
2.	Manufacturing, supplying, laying, jointing and testing of 1200mm diameter PSC gravity main from Singapur to Osmansagar Ch.250 to Ch.500, Reach-II of MWSS Phase-III	8/SE/87-88,dt.27.5.1987, entered with SE, Water Works Circle, Hyderabad.	38,96,582.70	2,61,600.00	36,34,982.70
3.	Manufacturing, supplying, laying, jointing and testing of 1200mm diameter PSC gravity main from Singapur to Osmansagar Ch.500 to Ch.766, Reach-III of MWSS Phase-III.	9/SE/87-88, Dt.27.5.1987 Entered with SE, Water Works Circle, Hyderabad.			
	Total		48,23,298.70	4,21,006.00	44,02,292.70

The petitioner has invoked the arbitration clause for the work of Reach-I only and he has not invoked the arbitration clause for the works of Reaches-II & III. The 1st respondent had written a letter dated 17.01.1994 to the Executive Engineer, Public Health Division, Visakhapatnam for withholding a sum of Rs.27,29,002/-. On 01.03.1994, the petitioner had filed W.P.No.3500 of 1994 seeking writ of mandamus declaring the letter dated 19.02.1994 issued by the Executive Engineer, Public Health Division, Visakhapatnam as illegal and for setting aside the same and for direction to the Executive Engineer, Public Health Division, Visakhapatnam to make final bill and release amounts due to him for the work executed under agreement dated 04.03.1993 and the said writ petition was dismissed by orders dated 06.03.1995. On 17.02.1997, the petitioner filed OS No.364 of 1997 on the file of IV Additional Judge, City Civil Court, Hyderabad against Engineer-in-Chief, Public Health Department, Public Health, A.C.Guards, Hyderabad and two others seeking a decree for Rs.53,74,635/- along with interest at 25% p.a and costs. The said suit was dismissed with costs by judgment and decree dated 23.09.1999. Aggrieved by the above judgment, the petitioner preferred CCA No.250 of 1999 and also filed CMP No.26645 of 1999. By orders dated 29.12.1999, this Court passed orders of stay on condition of the petitioner depositing 50% of the cost awarded within eight weeks. The above orders in W.P.No.3500 of 1994 and judgment and decree dated 23.09.1999 in O.S.No.364 of 1997 clearly establish that the writ petition as claimed and filed by the petitioner is not maintainable either in law or in fact. Hence, the respondents have validly invoked clause-71 of PS to APDSS and withheld the amounts by way of recovery from and out of the amounts payable to the petitioner from any work or contract undertaken by him both at Visakhapatnam and Alwal and sought for dismissal of the writ petition.

6. Learned counsel for the petitioner submits that the impugned order in the writ petition is illegal, arbitrary and the respondents cannot invoke clause 71 of APDSS unless and until the amount

claimed by the respondent is crystallized into an ascertained amount by the Arbitrator or by a Competent Forum. He would further contend that respondent cannot adjust or appropriate the amount and that the petitioner specifically denied the amount by way of reply dated 11.02.2002 to the impugned proceedings. That the Misrigunj work is covered by an arbitration award and the matter is pending in this Court. As far as work at Visakhapatnam is concerned, the amount was decreed in favour of the petitioner by this Court and confirmed in SLP by the Hon'ble Supreme Court. So far as work at Alwal is concerned, the subject matter of present writ petition and Osmansagar works, either party preferred any legal proceedings. He further submits that the disputed Osmansagar works pertaining to Reach II and III were entrusted to the petitioner by the 1st respondent under agreement dated 27.05.1987, respectively and the petitioner completed the work in all respects. The respondents had supplied certain material such as cement, steel, H.T wire for manufacturing the pipes. The material account has to be reconciled by both the parties, but there was some discrepancy in the account. The petitioner disputed the same by letter dated 11.07.1993. When petitioner has completed the work, without considering the same, the 1st respondent has called upon the petitioner to return certain material such as HT wire, Cement and M.S.Plates in respect of both the works by the Executive Engineer letters dated 04.12.1993 (Reach-II) and 31.12.1993 (Reach-III). The petitioner addressed a letter dated 29.01.1994 explaining the details and disputed the claim of the Executive Engineer and also called for a meeting to amicably settle the issue. However, there was no reply. But unilaterally, the respondent without prior notice, issued the impugned letter dated 07.02.2002 adjusting the amount due to the petitioner from Visakhapatnam work and the Alwal work towards the alleged dues under Misrigunj and Osmansagar (Reaches-II & III) works. The petitioner has disputed the amounts due in respect of Misrigunj and Osmansagar (Reaches II & III). The petitioner denied the claim of Executive Engineer for excess drawal of material to an extent if 2832 MT of cement and 66.469 MTs of HT wire and this issue can be adjudicated only by arbitration as contemplated in the agreement. When the EMD & FSD to an extent of Rs.14,50,000/- is available, the respondent is not justified in withholding huge amount. The exact amount was not quantified by any competent authority. He would further contend that the respondent mentioned different figures in the letter and affidavit at different stages. He would contend that the Misrigunj work mentioned in the impugned letter was the subject matter of arbitration, where the Hon'ble Arbitrator awarded a sum of Rs.1,97,372/- in favour of the petitioner by his Award dated 15.03.2003 against which, both parties filed O.P.Nos.16/2003 under Section 17 of 1940 Act to make award rule of Court and O.P.No.17 of 2003 under Section 30 to set aside the Award to the extent of disallowed claims. The respondent filed O.S.No.22/2003 under Section 30 to set aside the award granted in favour of the petitioner. By common order, both the OPs of petitioner are dismissed and respondents OP was allowed and set-aside the award. The petitioner preferred CMA No.197 of 2011 against award in O.P.No.16 of 2003, C.M.A.No.264/2011 against Award in O.P.No.17 of 2003 and C.M.A No.351/2003 against O.P.No.22 of 2003. He would further contend that unless and until these cases are decided, the respondents cannot affect recovery. He would further contend that except two letters dated 04.12.1993 and 31.12.1993, asking the petitioner to refund the materials, no specific letter was addressed giving particulars of the amount now claimed and did not refer two letters addressed by the petitioner on 11.07.1993 and 29.01.1994.

No reasonable opportunity was given to the petitioner to explain his case before effecting adjustment of amount, which is against principles of natural justice. He also contends that the documents reveal that the respondents made assessment and through their internal correspondence, initially arrived at the figure of Rs.32,13,474/- and thereafter, the same has been enhanced to Rs.36,34,982.70 Ps. In support of his contention, he relied on the judgments reported in **M/s.Lakshmichand and Balchand v. State of A.P**[1], **Stae of Karnataka v. Shree Rameshwara Rice Mills, Thirthahalli**[2]**, K.Raja Rao v. A.P.Industrial Development Corporation Limited rep. by its Managing Director, Hyderabad and another**[3], **G.Rajender Reddy and Company rep. by its Managing Partner, G.Rajender Reddy v. Government of Andhra Pradesh, rep. by its Principal Secretary, Roads & Buildings Department and others**[4]. He would further contend that the work was completed in the year 1993 and the completion certificate was issued by the respondent on 24.08.1993. The defect liability period of two years expired by 1995. The respondent did not file any legal proceedings for recovery of the alleged amount within 3 years there from i.e., before 1998. As such, the demand of the respondent through impugned notice dated 07.02.2002 is barred by limitation and the adjustment made by the respondents is illegal and unsustainable. The respondent is making the claim against the petitioner, as such, the respondent has to invoke the forum for adjudication within limitation. He contends that in contractual matters, the writ petition is maintainable when the state or its instrumentality acts arbitrarily and unfairly. In support of his contention, he relied on the judgment reported in **ABL International Limited and another v. Export Credit Guarantee Corporation of India Ltd., and others**[5].

7. On the other hand, learned counsel for the respondent submits that the writ petition itself is not maintainable, as the petitioner is claiming the amounts arising out of the contractual disputes. He also submits that the petitioner has to approach the Civil Court as per clause 73 of APDSS since the amount the petitioner is claiming exceeding Rs.50,000/-. He also submits clauses 71 and 73 are part of the agreements and that the petitioner and respondents have executed contract, as such, the respondents are entitled for invoking the clause 71 of APDSS and withhold the amount due to the petitioner in respect of dues of the petitioner in respect of other contracts. He also submits that while petitioner is having alternative remedy, he cannot seek remedy under Article 226 of the Constitution of India by filing writ petition for recovery of the amount arising out of the contractual obligations. He also contends that when alternative remedy is available, this Court will not entertain the writ petition. More so, the disputed questions of facts are involved. He submits that petitioner has not returned the excess material supplied to him in respect of other works and as a result, petitioner was due some amount in respect of same and the authorities have asked the respondent to withhold the amounts due to the petitioner. As such, the impugned proceedings were issued by invoking clause 71 of APDSS and same cannot be faulted. In support of his contention, he relied on the judgments reported in **Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation**[6]**, State of U.P and others v. Bridge and Roof Co.India Ltd.,**[7]**, Industrial Finance Corporation India Ltd., New Delhi & Others v. Sree Krishna Oil Complex Limited, Hyderabad**[8] **and the Executive Engineer, Irrigation, Circle No.3, Nizamabad and another v. C.Raghava Reddy**[9]**.**

8. Before dealing with the rival contentions, it is relevant to

extract clauses 71 and 73 of Andhra Pradesh Standard Specifications for deciding the subject issue.

> "Clause 71: Recovery of money from contractor in certain cases: In every case in which provision is made for recovery of money from the contractor, Government shall be entitled to retain or deduct the amount thereof from any moneys that may be due or may become due to the contractor under these presents and/or under any other contract or contracts or any other account whatsoever.
>
> Clause 73: Add the following the end of the Clause.
>
> Settlement of claims above Rs.50,000/- in value.
> For all claims above Rs.50,000/- in value either party shall go to the civil court of competent jurisdiction by way of regular suit and not by arbitration."

In view of the above factual back ground, the point that arises for consideration in this writ petition is whether the respondents are entitled to adjust the amounts due to the petitioner towards dues to the respondents for an amount of Rs.44,02,292.70 ps.

It is the claim of the respondents that they have adjusted the amount to be paid to the petitioner towards dues to the respondent as they are entitled to retain or deduct the amount thereof from any monies that may be due or may become due to the contractor as per Clause 71 of the A.P.D.S.S. It is not the case of the respondents that they are not liable to pay any amounts to the petitioner, but they are seeking to adjust the disputed amount towards amount due from the petitioner in respect other works. No doubt, as per Clause 71 of the A.P.D.S.S, Government has power to recovery money from the Contractor in certain cases in which provision is made for recovery of money from the contractor, Government is entitled to retain or deduct the amount thereof from the monies that may be due or may become due to the contractor. But in the present case on hand, learned counsel for the petitioner submits that the amount that is sought to be adjusted in respect of dues to the respondent is not determined and that unless the amount due to the respondent is determined by the independent authority, the same cannot be adjusted or deducted from the amounts due to the petitioner by the respondents. Even according to the counter affidavit filed by the respondents, it is not clear whether the amounts are ascertained or not which were sought to be recovered from the petitioner. Even according to the counter affidavit of the respondents, arbitration proceedings are pending in respect of item No.1 of the impugned order, however, as against the item nos. 2 and 3, no arbitration proceedings are pending.

9. Clause 73 of the Andhra Pradesh Standard Specifications provides for all claims above Rs.50,000/- in value either party shall approach the civil court of competent jurisdiction by way of regular suit and not by arbitration. In the instant case, though the amount due to the petitioner is admitted, but the respondents are seeking to adjust the same in respect of dues to the respondent in respect of other contracts. According to the petitioner, the amount due to the respondents have not been ascertained or determined by the respondents, as such, respondents cannot adjust the amount of the petitioner. The forum, which is established for claims above Rs.50,000/- in value is civil court. In **ABL International Limited and another v. Export Credit Guarantee Corporation of India Ltd., and others (supra)** the Hon'ble Supreme Court held as follows:

> "53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information

and after receiving huge sums of money as premium exceeding Rs.16 lacs. On facts we have found that the terms of the policy does not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner."

b) In **the Executive Engineer, Irrigation, Circle No.3, Nizamabad and another v. C.Raghava Reddy (supra),** a Division Bench of this Court held as follows:

"25. We are therefore of the opinion that the learned Single Judge erred in issuing a writ of mandamus interdicting the respondents who are the appellants before us from enforcing the terms of Clause 71 of the A.P. Detailed Standard Specifications which was part of agreement No.10/83 dated 5-9-83 which the petitioner had entered into with the State, represented by the respondents."

c) In **Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited and another (supra),** the Hon'ble Supreme Court held as follows:

"19. There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties. (Vide: Bareilly Development Authority & Anr. v. Ajay Pal Singh & Ors., AIR 1989 SC 1076; and State of U.P. & Ors. v. Bridge & Roof Co. (India) Ltd., AIR 1996 SC 3515).

21. It is evident from the above, that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justiceiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie

to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

39. The cancellation of allotment was made by appellant-RIICO in exercise of its power under Rule 24 of the Rules 1979 read with the terms of the lease agreement. Such an order of cancellation could have been challenged by filing a review application before the competent authority under Rule 24 (aa) and, in the alternative, the respondent- company could have preferred an appeal under Rule 24(bb)(ii) before Infrastructure Development Committee of the Board. The respondent-company ought to have resorted to the arbitration clause provided in the lease deed in the event of a dispute, and the District Collector, Jaipur would have then, decided the case. However, the respondent- company did not resort to either of the statutory remedy, rather preferred a writ petition which could not have been entertained by the High Court. It is a settled law that writ does not lie merely because it is lawful to do so. A person may be asked to exhaust the statutory/alternative remedy available to him in law."

d) In **State of U.P and others v. Bridge and Roof Co.India Ltd., (supra)** the Hon'ble Supreme Court held as follows:

"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 of 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 underArticle 226.Indeed, the High Court has not granted the said prayer."

e) Industrial Finance Corporation India Ltd., New Delhi & Others v.

Sree Krishna Oil Complex Limited, Hyderabad (supra), a Division Bench of this Court held as follows:

> 18. In the instant case, as pointed out supra, the agreement entered into between the parties are ordinary civil contracts without involving operation of any statute or public element. Therefore, even assuming that the banks and the financial institutions have committed omissions and commissions in the matter of disbursement of the agreed loan amount in breach of the agreements entered into between them, as alleged by the respondent company in its writ affidavit, such omissions and commissions on the part of the banks and the financial institutions would, at the most, amount to a breach of an ordinary civil contract, in respect of which no relief can be granted in a writ petition by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution and the respondent company has to workout its remedies in a competent civil Court by way of a suit for damages and/or for specific performance.

> 21. As is well known, one of the grounds against the exercise of discretionary power vested in the High Court under Article 226 of the Constitution is where disputed facts have to be investigated. The reason is that when such dispute exists between the parties, the right claimed by the petitioner is not capable^ of being established in the summary proceedings under Article 226 of the Constitution, because, it requires a detailed examination of the evidence as may be had in a suit. The primary object of Article 226 is the enforcement of an established right and not the establishment of a right or title. A petition under Article 226 of the Constitution cannot be converted into a suit to resolve the factual controversies. The same principle has been extended even to mixed questions of fact and law by Courts. After perusing the pleadings of the parties, it is not possible for us to conclusively record findings on the factual pleas urged by the parties. It requires investigation of disputed facts by permitting the parties to lead evidence and it also involves appreciation of evidence that may be so led by the parties. This Court cannot be converted into a trial Court in exercising its power under Article 226 of the Constitution, particularly when the parry approaching this Court under Article 226 can work out his/its remedy by approaching a competent and jurisdictional civil Court. The disputed questions that arise for decision in the instant case cannot be resolved on the basis of the pleadings and the documents produced by the parties, and in fact it requires further investigation into the disputed facts.

> 22. In general, a disputed question of fact is not investigated in a proceeding under Article 226 of the Constitution, particularly where an alternative efficacious remedy is available and where no effective and conclusive decision cannot be taken on the basis of the pleadings and the documents filed in the writ petition. This position is well settled by the judgments in Union of India v. Ghaus Mohammad, , Bokarao and Ramgur

> Limited v. State of Bihar, , Moti Das, Mohant v. Sahi, S.P., ; Principal, Industrial Training Institute, Gahazipur v. Abhay Kumar Srivastava, 1995 Supp. (4) SCC 617, U.P. State Mineral Development Corporation v. K.C.P. Sinha, , State of M.P. v. M.V. Vyavsaya, , State Bank of India v. State Bank of India Canteen Employees' Union, , Ram Badan Rai v. Union of India, , Chairman, Grid Corporation of Orissa Limited v. Sukamani Das, , Indian Overseas Bank v. IOB Staff Canteen Workers Union, , Factory Manager, CIMMCO Wagon Factory v. Virendra Kumar Sharma, (, and Jai Singh v. Union of India, , to cite a few. Further, in Union of India v. Verma T.R., , and Burmah Construction Company v. State of Orissa, , the Supreme Court held that claims arising out of breach of contract or tort where it becomes necessary to investigate into the disputed questions cannot be entertained under Article 226 of the Constitution. In Maheswar Prasad Srivastava v. Suresh Singh, AIR 1976 SC 1766, the Apex Court held that the determination made by an expert body, in the absence of mala fides, cannot be interfered by exercising the power under Article 226 of the Constitution. Since the factual pleas put forth by the parties to the writ petition do involve investigation of disputed facts and recording findings on pure questions of fact, it is appropriate that this Court should have declined to entertain the writ petition.

f) In **M/s.Lakshmichand and Balchand v. State of A.P (supra)** the Hon'ble Supreme Court held that the amount sought to be adjusted has yet to be determined as a liability against the contractor. But, in the present case on hand, clause 73 of A.P. Detailed Standard Specifications forms part of the contract which goes to show that an alternative remedy is provided for the claims above Rs.50,000/-. When alternative remedy is available, ordinarily it is for the party to avail the alternative remedy as held in **ABL International case (supra).** It does not mean that the present writ petition is not maintainable but this Court will not entertain the writ petition when alternative remedy is provided for. More so, the dispute in **M/s.Lakshmichand and Balchand v. State of A.P (supra),** arising out of suit proceedings, as such, the said decision is not applicable to the facts of the present case. Though the learned counsel for the petitioner has taken a plea of limitation, the same is not reflected in the pleadings in the writ petition, as such, the said issue cannot be decided in the writ petition.

The petitioner has relied on the decisions reported in **K.Raja Rao v. A.P.Industrial Development Corporation Limited rep. by its Managing Director, Hyderabad and another (supra)** and **G.Rajender Reddy and Company rep. by its Managing Partner, G.Rajender Reddy v. Government of Andhra Pradesh, rep. by its Principal Secretary, Roads & Buildings Department and others (supra)** are not applicable to the facts of the present case as they are arising out of revenue recovery act. In the instant case, the issue is governed by Clauses 71 and 73 of the A.P.Detailed Standard Specifications, as such, the said decisions are not applicable to the facts of this case.

Learned counsel for the petitioner had relied on the judgment of this Court in **B.C.Mulajkar v. Government of Andhra Pradesh represented by its Secretary, Industries and Commerce Department, and others**[10]**,** wherein the issue was with regard to the determination of liability under Madras Revenue Recovery Act. In **D.Nageswaraiah v. Government of Andhra Pradesh and others**[11]**,** the issue arising out of excess amount paid to the contractor, as such, the deposits i.e., FSD and EMD amounts were forfeited towards the excess payment made to the contractor. In the instant case on hand, the subject issue was governed by Clauses 71 and 73 of the A.P.Detailed Standard Specifications. As such, the said decision is not applicable to the facts in the present case.

In view of the above facts and circumstances, when alternative remedy is available as per Clause 73 of the A.P.D.S.S., this Court is not inclined to entertain the writ petition. Since, the aspect whether respondents are entitled to adjust the amount due to the petitioner in respect of amount due by the petitioner to the respondents, is a disputed question of fact, cannot be decided by exercising the power of judicial review.

In the aforesaid background, I do not see any merit in the writ petition and same is liable to be dismissed.

Accordingly, this writ petition is dismissed. However, this order will not preclude the writ petitioner from availing alternate remedy available under law. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

31.12.2015
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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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[1] AIR 1987 Supreme Court 20

[2] AIR 1987 Supreme Court 1359

[3] 2013 (2) ALT 366 (DB)

[4] 2013 (1) ALT 682

[5] (2004) 3 Supreme Court Cases 553

[6] (2013) 5 Supreme Court Cases 470

[7] AIR 1996 Supreme Court 3515

[8] 2002 (3) ALT 168 (D.B)

[9] 1992 (2) ALT 80 (D.B)

[10] AIR 1971 Andhra Pradesh 169 (V.58 C 31)(1)

[11] 2013 (3) ALD 494 (DB)