

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.2579 of 2017

Girja Shankar Dubey S/o Late Bisahu Prasad Dubey, Aged About 42 Years R/o Village Kalkasa, Post Malighori, Tehsil Dondilohara, District Balod, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Urban & General Administration Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Director, Urban And Administration Department, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh.
3. Deputy Director, Urban And Administration Department, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh.
4. Collector, Balod, District Balod, Chhattisgarh.
5. Nagar Panchayat Dondilohara, Through Chief Municipal Officer, Nagar Panchayat Dondilohara, District Balod, Chhattisgarh.

---- Respondents

For Petitioner	:	Ms Hamida Siddique, Advocate
For Res.No.1 to 4	:	Mr.Arun Sao, Dy.A.G.
For Respondent No.5	:	Mr.H.B.Agrawal, Senior Advocate with Mrs.Prabha Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

20/09/2017

1. Learned counsel for the petitioner would submit that the petitioner's representation has been rejected on untenable grounds and as such, he is entitled for an amount of Rs.8,86,000/-. Therefore, appropriate writ be issued in favour of the petitioner directing payment of above-stated amount.
2. On the other hand, learned Senior Counsel appearing for respondent No.5 would submit that the petitioner is not entitled for above-stated amount and it is a case of breach of contract and the writ petition as framed and filed is not maintainable.

3. I have heard learned counsel appearing for the parties and considered their rival submission made hereinabove.
4. The petitioner's representation has been rejected by the impugned order holding that on the basis of enquiry report he is entitled for only Rs.4,14,252/-. Thus, it is a case of contractual dispute between the parties and in case of claim arising out of breach of the contract, the writ petition is not an appropriate remedy for impeaching contractual obligations.
5. The legal position in this regard is no longer res-integra. In the matter of **National Highways Authority of India Vs. Ganga Enterprises and another**¹, the Supreme Court has clearly held that in case of claim arising out of breach of contract, the writ petition is not an appropriate remedy for impeaching contractual obligations.
6. The above-stated decision has been relied upon by the Supreme Court in the matter of **Orissa Agro Industries Corporation Ltd. and others Vs. Bharati Industries and others**² and held as under:-

“11. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager Kisan Sahkari Chini Mills Ltd., Sultanpur U.P. v. Satrugan Nishad and others³, Rourkela Shramik Sangh v. Steel Authority of India Ltd. and another⁴).

12. In National Highways Authority of India v. Ganga

1 (2003) 7 SCC 410

2 AIR 2006 SC 198

3 (2003) 8 SCC 639

4 (2003) 4 SCC 317

Enterprises and another (supra), it was observed by this Court that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See: Har Shankar and Ors. etc. etc. v. The Deputy Excise and Taxation Commissioner and others⁵ and The Divisional Forest Officer v. Bishwanath Tea Co. Ltd.⁶)”

7. Similarly, in the matter of Gujarat Maritime Board Vs. L & T Infrastructure Development Projects Ltd. and another⁷, the Supreme Court has held that where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract. It was observed as under:-

“10. 70.6 Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.”

8. In view of the aforesaid submission, the writ petition involves disputed question of fact arising out of breach of contract and therefore, the writ petition as framed and filed is not maintainable and it is dismissed as not maintainable. However, this will not bar the petitioner to proceed in accordance with law. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

5 AIR 1975 SC 1121

6 AIR 1981 SC 1398

7 AIR 2016 SC 4502