

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2183 of 2019**

- M/s Manoj Agrawal S/o M.L. Agrawal, Represented Through Shri Manoj Agrawal, Registered Contractor Age 49 Years, R/o Samadhan, Bharat Mata Chowk, Shanti Nagar Raipur, Chhattisgarh.

----Petitioner**VERSUS**

1. State of Chhattisgarh through The Chief Secretary, Government of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
2. Chhattisgarh Kamdhenu Vishwavidhyala, through its Vice-Chancellor, Anjora, District-Durg, Chhattisgarh
3. Executive Engineer Chhattisgarh Kamdhenu Vishwavidyalaya, Camp Office-Food Processing and Dairy Science College, Raipur, Chhattisgarh and also at Chhattisgarh Kamdhenu Vishwavidyalay, Anjora, District- Durg, Chhattisgarh.

-----Respondents

For Petitioner	:	Mr. Y.C. Sharma Advocate
For Respondents No. 2, 3	:	Mr. A.S. Kachhwaha, Advocate
For Respondent-State	:	Mr. Sudeep Verma, Dy.G.A.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****18/11/2019**

1. The petitioner has filed this petition challenging the order dated 09-05-2019 issued by respondent No. 3 whereby the contract agreement entered between the petitioner and respondent No. 3 has been terminated.
2. Facts of the case in nutshell are, that respondent No. 3 invited a tender notification for construction of Vice-Chancellor's Bungalow and Staff Residential Quarter at Anjora, District Durg, Chhattisgarh. The petitioner became successful tenderer in the said tender proceeding and he has been awarded contract by executing agreement and by issuing work order dated 10-03-2017 in his favour. The period for completion of construction work was provided as 8 months (including rainy season). The petitioner started

execution of construction work but for one or the other reasons as stated by him, he could not able to complete the total work as per the terms and conditions of the contract agreement and the contract agreement was terminated.

3. The learned counsel for the petitioner submits that the reason for non-completion of the tender work is on account of late providing of drawing and designs of the buildings and late payments of the bills raised by him time to time. He also submits that he has written several letters intimating the authorities for payment of the bills raised by him, so that he can expedite the construction work to be completed within appropriate time. He further submits that looking to the hindrance in progress of work as mentioned above, the petitioner could not able to match progress of work with stipulated time, therefore, extension of time was also granted. He also submitted that the bricklin provided for construction was of poor quality and by letter written to respondent No. 3, it was requested to be removed. The letters showing different grievances are placed on record as Annexure P-4 (dated 03-08-2017 & 30-10-2017), Annexure P-5 (dated 06-01-2018 & 07-02-2018) and Annexure P/6 (dated 14-03-2018 & 21-03-2018). The period had been extended up to 31-05-2019 but before expiry of extended period, the contract agreement was terminated on 09.05.2019 which shows the arbitrariness in the action of respondent/department.
4. The learned counsel for the petitioner also submits that the non-completion of the tender work within a prescribed period of time is due to the several lapses on the part of the respondent No.3, which is also evident from the letters annexed by him along with the writ petition, therefore, the order terminating of the contract agreement is liable to be interdicted.
5. Per contra, the learned counsel for respondent Nos. 2 & 3 submits that looking to the urgency of the work, the specified period of 8 months including rainy

season has been provided in the contract agreement. He submits that the allegations as made by the learned counsel for the petitioner is not sustainable because the petitioner could have started the construction work only after issuance of drawing and designs and as the petitioner has efficiently started the work at the initial stage on time, this allegation made by him is not sustainable. He also submits that the allegation with respect to the non-payment of the bills raised by him in time is also not sustainable as the respondent Nos. 2 & 3 have already awarded the bills raised by him to the tune of Rs. 83 Lac (Rupees Eighty Three Lac), based on the completion of the work and its assessment. He submits that the petitioner failed to perform its work even after the extended period for which, the respondent/department had also issued letters time to time to him, in which, it has been mentioned the lapses on the part of the petitioner. He further submits that after extension of time, the petitioner was asked to submit the construction program which he has not submitted. Even after extension of time twice for completion of work, only 41.8% of total work was completed by him. It was not possible for the petitioner to complete the balance work of 59.2% within 20 days and therefore there is no arbitrariness in the action taken by respondent No. 3. He also submits that in view of the availability of Arbitration clause in terms and conditions of contract, the writ petition is not maintainable in facts and circumstances of the case. Learned counsel places his reliance in the matter of **Pimpri Chinchwad Municipal Corporation and others v. Gayatri Construction Company and Anr.** reported in **(2008) 8 SCC 172.**

6. Heard learned counsel for the petitioner, learned counsel appearing for respondent No. 2 & 3 as well as learned Deputy Government Advocate representing the State.
7. Perusal of the records would show that the contract was for construction of the Vice-Chancellor bungalow and staff residential quarter. It is not disputed by

the petitioner that the balance work was about 59.2% of the total work which could not be completed even after extension of time period twice but for the submission that it was due to the lapses on the part of the respondent. The time has been made essence of the contract. As per contract agreement, the total work under contract was to be completed withing 8 months including rainy season, but the petitioner could not able to complete even fifty percent of work after extension of six months from scheduled time of original contract. The other aspect of the case is that, both the parties have levelled counter allegations against each other placing reliance on the letters and documents submitted by them, and alleging the lapses on each other.

8. Clause 32 of the conditions of the contract provides arbitration for redressal of the dispute arising between the parties during the currency of the contract period. Relevant portion of the said clause is as follows:

“ARBITRATION CLAUSE

Clause-32 :- Except as otherwise provided in this contract all question and dispute relating to the meaning of the specification drawings and instructions herein before mentioned and as to thing what so ever, in any way arising out of or relating to the contract designs, drawings, specification estimate.

Concerning the work or execution of failure to execute the same, whether arising during the progress of the work or after the completion or abandonment there of shall be referred of 30 days of such occurrence. There upon the Executive Engineer. Shall give his written in instruction and/ or decision with in a period or 60 days of such request. This period can be extended by mutual consent of the parties.”

The Hon'ble Supreme Court in the matter of **State of Bihar and others v. Jain**

Plastic and Chemicals Ltd. reported in **(2002) 1 SCC 216** held that:

“4. Despite the settled law, the respondent filed CWJC No. 3968 of 1997 before the High Court of Patna challenging the decision taken by the appellants to deduct a sum of Rs. 15.24 lacs for the loss suffered, from the bills of the respondent-Company while making the full and final payment. That writ petition

was allowed despite the objection raised by the appellants that the respondent committed breach of contract and the Court should not exercise its writ jurisdiction in such cases. L.P.A. No. 945 of 2000 was also dismissed by the High Court by its judgment and order dated 11.1.2001. Hence this appeal.

7. In our view, it is apparent that the order passed by the High Court is on the face of it illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by the Court exercising prerogative of issuing writs.”

9. In the matter of **Pimpri Chinchwad Municipal Corporation** (supra). the Hon'ble Supreme Court has held thus:

“11. In matters relating to maintainability of writ petitions in contractual matters there are a catena of decisions dealing with the issue.

12. In *National Highways Authority of India v. Ganga enterprises* [(2003) 7 SCC 410] it was inter alia held as follows: (SCC p. 415, para 6)

'6. The respondent then filed a writ petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz.: (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter. The High Court instead considered Question (a) and then chose not to answer Question (b). In our view, the answer to Question (b) is clear. It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in *Kerala SEB v. Kurien E. Kalathil* (2000) 6 SCC 293, *State of U.P. v. Bridge & Roof Co. (India) Ltd.* (1996) 6 SCC 22 and *Bareilly Development Authority v. Ajai Pal Singh* (1989) 2 SCC 116. This is settled law. The

dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however, relied upon *Verigamto Naveen v. Govt. of A.P.* (2001) 8 SCC 344 and *Harminder Singh Arora v. Union of India* (1986) 3 SCC 247. These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.'

13. In *Kerala SEB v. Kurien E. Kalathil* [(2000) 6 SCC 293], this Court dealt with the question of maintainability of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and availability of alternative remedies, as also difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was noted as follows: (SCC pp. 298-99)

'10. We find that there is a merit in the first contention of Mr. Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of

public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.' "

10. Looking to the counter allegations made by the learned counsel for the parties as well as the documents placed on record, it is apparent that the disputed question of fact has been raised on behalf of both the parties, which could not be entertained/ agitated in the writ proceedings because the grounds raised by the learned counsel for the parties can only be decided by evidence to be adduced by the parties.

11. In view of above facts and circumstances and law declared by the Hon'ble Supreme Court on the issue, we are not inclined to entertain this writ petition which is liable to be and is hereby dismissed. However, the petitioner will be at liberty to take recourse of the proceedings available to him under the law.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge